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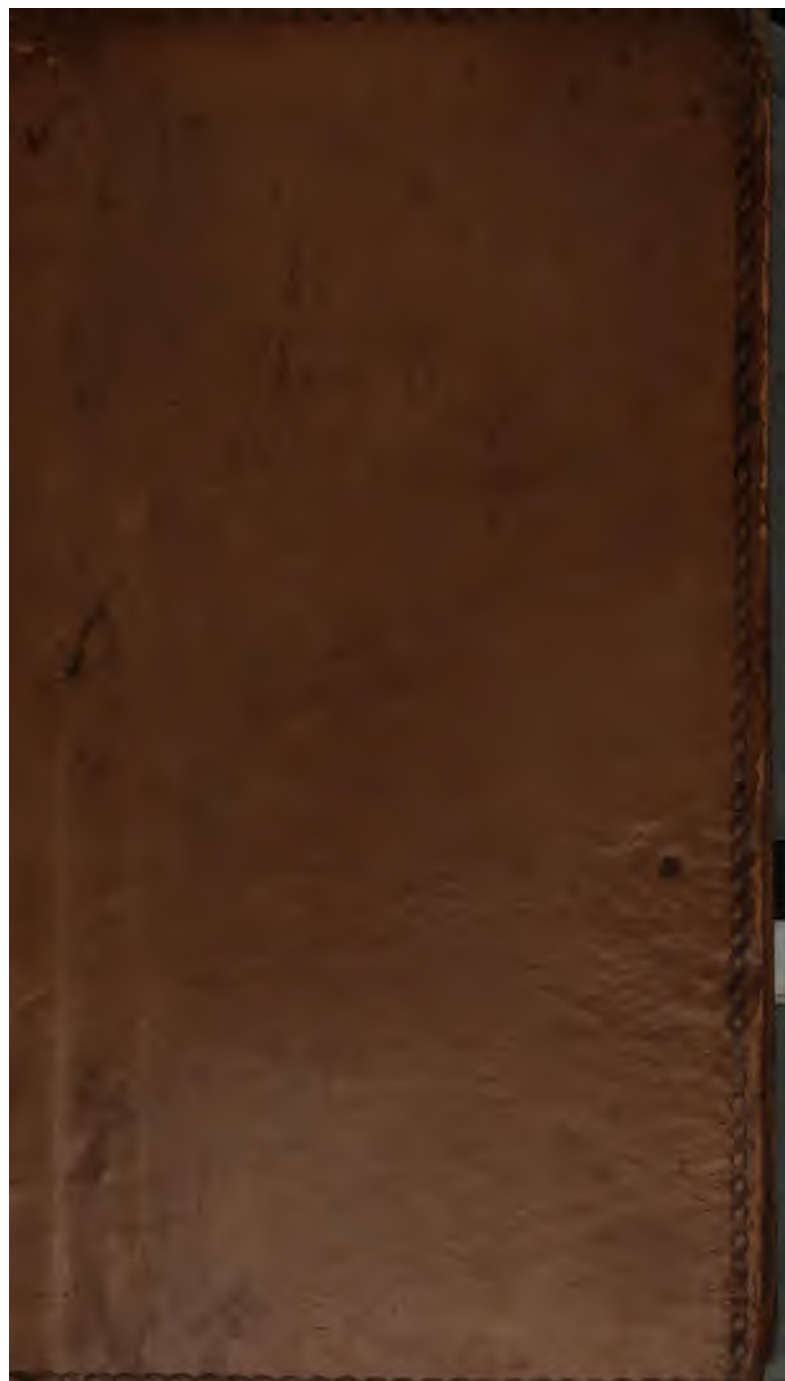
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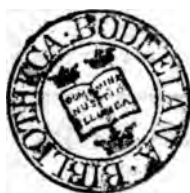
J. STAMFORD CALDWELL, Esq.

OF LINCOLN'S INN, BARRISTER AT LAW.

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1821.



**G. WOODFALL, PRINTER,
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TO

THE MAGISTRACY

OF THE COUNTIES OF

CHESTER AND STAFFORD,

WHOSE SESSIONS HE HAS FOR SEVERAL YEARS ATTENDED,

THIS WORK

IS,

WITH MUCH RESPECT,

DEDICATED

BY

THE AUTHOR.



TO THE READER.

THE Author of this Work is well aware how almost impossible, even with the most painful attention to the subject, it must have been, altogether to have avoided falling into some errors, and being guilty of some omissions; but he earnestly hopes to meet with candour and indulgence when it is considered of how large a number of cases and statutory provisions it has been attempted to give the substance in this small volume.

Some decisions have taken place in the Courts since the parts of the book to which they more immediately had reference went to press, and some few omissions have been discovered too late for correction in the body of the work; a list, therefore, of *Addenda et Corrigenda*, in the order of the pages, has been subjoined, to which the attention of the reader is especially requested*. By consulting the Table of Contents, the parts of the work to which the *Addenda* relate will most easily be ascertained.

With regard to the Statutes, it having been found, after the printing of this work had made some progress, that they would occupy more space than was deemed convenient, the plan suggested itself of abridging the clauses in the very words of the Statutes, in preference to an attempt to give

* In particular to the articles of the *Addenda*, F. HH. 2. AA. GG.

the substance in the Author's own language; and also, to print in Italics the more material words of the clauses, in place of a marginal abstract. The very considerable curtailment of the size of the volume by this means will, it is hoped, be considered an advantage*.

Several MSS. cases have been obligingly communicated by different members of the Profession, to whom the author begs to offer his grateful acknowledgments; but he has, upon consideration, deemed it best to insert no case for which he had not authority in print.

With these few observations the Author commits his work to the Public, feeling very really diffident of its claim to approbation, at the same time not without the hope that it may be found useful, where the more detailed cases edited by Mr. Bott, and the excellent Treatise by Mr. Nolan, are not at hand. If, indeed, the anxious endeavour faithfully and accurately to execute the undertaking, may to any extent atone for imperfection in its accomplishment, to such degree of indulgence, at least, the author is most truly entitled.

PAPER BUILDINGS,
July 2, 1821.

* The word "may" has been left instead of "may and shall," or "it shall be lawful for," &c. since the word "may," in a statute, is the same as the word "shall," or "is compellable to," &c. See *Rex v. Barlow*, *Salk.* 609. i. 332.

i. & ii. refer to the 1st and 2d vols. of *Bott's Digest of the Poor Laws*.

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A

DIGEST

OF

THE POOR LAWS.

APPEAL

in the case of

- I. THE APPOINTMENT OF OVERSEERS.
- II. THE POOR RATE.
- III. OVERSEERS' ACCOUNTS.
- IV. VAGRANT PASSES.
- V. AN ORDER OF RELIEF.
- VI. _____ BASTARDY.
- VII. _____ APPRENTICESHIP.
- VIII. _____ REMOVAL.
- IX. _____ SUSPENSION.
- X. MISCELLANEOUS.

I. *In the Case of the Appointment of Overseers.*

1. Any person, conceiving himself to have been improperly appointed overseer, may appeal to the general quarter-sessions (under the 43 *Eliz. c. 2.*); or he may remove the appointment at once into the court of King's Bench by *certiorari*, and that court will determine its legality upon affidavits of the facts. *Rex v. Great Marlow*, 2 *E. R.* 244. i. 71. *Rex v. Harman, And.* 343. i. 67. *Rex v. Standard Hill*, 4 *M. & S.* 378. *supp.* 231.

2. The court of King's Bench will enter into the question, upon affidavit, whether the place for which the appointment has been made be a township or vill; and if it do not positively appear, upon the face of the affidavits, that such place is a vill, or reputed to be so, they will quash the appointment. *Rex v. Standard Hill*, 4 *M. & S.* 378. *supp.* 231.

3. If the party appeal, it seems that the appeal should be to the next sessions. See 17 *Geo. 2. c. 38. s. 4. Rex v. Coode and others*, i. 281. *Rex v. Micklefield*, i. 284.

4. Upon the appeal, evidence may be given of any thing which tends to shew a want of jurisdiction in the magistrates who made the order, or the impropriety of the appointment. *Rex v. Flisher*, i. 69. *Albrighton v. Skipton*, *Str.* 300. ii. 637. *Rex v. Stotfold*, 4 *T. R.* 596. ii. 634.

5. If an appointment be made by persons calling themselves justices, who are not so, it is a nullity; and therefore the party appointed needs not appeal. *Rex v. Towill*, i. 69.

6. But if upon the appeal it be stated that the appointment was made by such persons, "justices of the peace," this is an admission of their jurisdiction. *Ibid.*

7. The parishioners, as well as the overseers appointed, may appeal under the 43 *Eliz. c. 2. s. 6. Rex v. Forrest*, 3 *T. R.* 38. i. 70.

8. The order which the sessions make, may be removed by *certiorari*; and although the justices be not bound to state their reasons, yet, if they do set out their whole reason upon the face of the order, and such reason be manifestly bad, and appear to have been their only inducement, the court will quash the order. *Rex v. Gayer, Burr.* 245. i. 9.

See titles, CERTIORARI, MANDAMUS, &c.

II. In the Case of the Poor Rate.

1. By 43 *Eliz. c. 2. s. 6.* it is enacted, That if any person or persons shall find themselves grieved with any sess or tax, or other act done by the said churchwardens and other persons, or by the said justices of peace, that then it shall be lawful for the justices of peace at their general quarter-sessions, or the greater number of them, to take such order therein as to them shall be thought convenient; and the same to conclude and bind all the said parties.

2. And by same stat. *s. 8.* it is enacted, That the mayors, bailiffs or other head officers of every town and place corporate, and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdictions, as well out of the sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or

more of them, or to the justices of the peace in their quarter-sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there: and that every alderman of the city of *London* within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act, to be done and executed by one or two justices of peace of any county within this realm.

3. And therefore it was held that an appeal against a poor rate might be made at a borough sessions; and that the county sessions could not remove an appeal against a rate made in a corporation town having justices of its own. *Rex v. Taunton, Post.* 325. i. 274.

4. By 17 *Geo.* 2. c. 38. s. 4. In case any person or persons shall find him, her or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on, or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall find him, her or themselves aggrieved by any neglect, act or thing done or omitted by the churchwardens and overseers of the poor, or by any justices of the peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township or place, to appeal to the next general or quarter-sessions of the peace for the county, riding, division, corporation or franchise where such parish, township or place lies, and the justices of the peace there assembled are hereby authorized and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter-sessions, and then and there finally hear and determine the same; and the said justices may award and order to the party, for whom such appeal shall be determined, reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons by an act made in the eighth and ninth years of King *William* the Third, intituled, "An Act for supplying some defects in the laws for the relief of the poor of this kingdom."

5. But to authorize the sessions to award costs, the appeal must be entered and determined; it is not sufficient merely that notice of appeal has been given. *Rex v. Essex*, ii. 757. 8 T. R. 585.

6. By *s. 5.* it is provided, That in all corporations or franchises who have not four justices of the peace, it shall and may be lawful for any person or persons in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter-sessions of the peace for the county, riding or division wherein such corporation or franchise is situate.

7. And by *s. 6.* declaring, 'That whereas it hath been held, that upon appeals from rates and assessments, the justices of the peace may not only quash the old rates, but make new rates and assessments, from which no appeal can be had;' it is enacted, That upon all appeals from rates and assessments, the justices of the peace (where they shall see just cause to give relief) shall and are hereby required to amend the same, in such manner only as shall be necessary for giving such relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then and in every such case, the said justices shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly.

8. By the seventh section, a power is given to any person, finding him or herself aggrieved by any distress levied in pursuance of this act, to appeal to the next general or quarter-sessions of the peace for the county or precinct where such assessment was made, and the justices are to hear and finally determine the same.

9. By 41 *Geo. 3. c. 23. s. 2.* it is enacted, That from and after the passing of this act, all and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person or persons so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment, for any cause whatsoever; provided always, that if any person, rated or assessed in any rate or assessment made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned, to the churchwardens and overseers of the poor of any parish, township, vill, or place, or *any two of them*; then, from and after the giving of such notice,

and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum or sums of money from such person or persons, than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such pariah, township, vill, or place.

10. By s. 3. it is provided, That in case the said court of general or quarter-sessions of the peace shall upon appeal order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order that any sum or sums of money, in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced; or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid as aforesaid: provided always, that no justice of the peace, constable, or other officer of the peace or other person shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, which such justice, constable, or other officer or person shall have granted, made, executed, or done, for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing of the order for the non-payment of such sum or sums of money, which the said court is hereby authorized to make as aforesaid.

11. By s. 8. if upon the hearing of any appeal from any rate or assessment for the relief of the poor, the court of general or quarter-sessions of the peace shall order the name or names of any person or persons to be struck out of such rate or assessment, or the sum or sums rated or assessed on any person or persons to be decreased or lowered; and if it shall be made appear to the said court, that such person or persons hath or have, previously to the hearing of such appeal, paid any sum or sums of money, in consequence of such rate or assessment, which he, she, or they ought not to have paid or been charged with, then and in every such case the said court shall order all and every such sum and sums of money to be repaid and returned, by the said church-wardens and overseers of the poor, to the person or persons

having paid the same respectively, together with all reasonable costs, charges, and expences, occasioned by such person or persons having paid or been required to pay the same; and all and every the sum and sums of money so ordered to be repaid or returned by the churchwardens and overseers of the poor, or any of them, shall and may, together with all such costs, charges, and expences as aforesaid, be levied and recovered from them, or any of them, by distress and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered.

12. By s. 4. it is enacted, That from and after the passing of this act, all notices of appeal from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney, on his, her, or their behalf; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them, and the particular causes or grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter-sessions to which such appeal shall be made, shall not examine or enquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal.

13. Provided nevertheless, (by s. 5.) That with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing; and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or misstated in such written notice, where any notice shall have been given in writing.

14. And it is further enacted, (by s. 6.) That from and after the passing of this act, if any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed

in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect to any other person or persons; then, and in every such case, the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing, as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she, or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter-sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her or them to be therein rated and assessed at any sum or sums of money, or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered, in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to and alter the rate or assessment accordingly.

15. Upon an appeal against a poor-rate, on account of certain persons having been left out of the rate, the notice of appeal given by the appellant to the overseers must expressly state the names of the persons omitted in the rate; and it must appear, either in the caption or body of the rate, that the persons so omitted are liable to be rated. *Rex v. Justices of Berkshire*, i. 275.

16. *a.* The sessions have no authority to make a poor-rate; for they have only an *appellate* and not an *original* jurisdiction on this subject; and therefore, although, upon quashing a whole rate, they may order the overseers to make a new and equal rate, yet if they direct them by an original order to assess certain lands by name, and all other lands in the district equally by a pound-rate, such order is bad. *Rex v. Aberford East, Ld. Ray.* 798. i. 272.

16. *b.* It is within the jurisdiction of the justices of the peace to judge whether a rate be equal, or whether proper persons be inserted in it; and therefore, if a rate be unequal, or if persons be omitted who ought to be inserted, it is matter of appeal. *Rex v. Canterbury, Burr.* 2290. i. 279.

17. And, as the sessions have not an original jurisdiction, an order directing a new rate to be made must shew upon the face of it that it was on an appeal: nor will the court supply the defect by affidavit. *Garret v. Foot*, i. 271.

18. And, therefore, where a standing rate had been established in the parish for upwards of twenty years, and a new rate was made, which was appealed against, and the sessions quashed the new rate, and ordered the old rate to be continued, the order was held bad, for the sessions had no authority to make a standing rate or to confirm an old one. *Rex v. Audley, Salk*, 526. i. 272.

19. Where the sessions quashed a rate, upon the appeal of several inhabitants, because personal property was not rated, and the overseer in the new rate taxed the real estate ten times more in proportion to the personal, it was held that the sessions might quash the whole rate, and either make a new rate themselves, or order the parish officers to make one. *Rex v. St. Leonard's Shoreditch, Holt*, 508. i. 271.

20. If the rate be made on houses and lands upon an erroneous principle with respect to the proportion in which each should be rated, the sessions cannot amend, but should quash the whole rate. *Rex v. Sandwich, Dougl.* 562. i. 115.

21. If a person be rated for certain woodlands which he owns and occupies, and, on appeal, the sessions find it as a fact that the said woodlands consist of *timber trees*, they may strike out such assessment from the rate; and the court of King's Bench will not vacate the order, although it appear that the woodlands consist of *beech trees*, which are not *timber* except by the custom of the country. *Rex v. Minchinhampton, Burr*. 1810. i. 278. See *Aubrey v. Fischer*, 10 E. R. 446.

22. The persons whose names are omitted in a rate must have notice and be heard on the appeal before the rate is amended by inserting their names; for if, upon the removal of an order of sessions adjudging that certain persons ought to be added to a poor rate, and ordering the rate to be amended accordingly, the sessions omit to state that such persons had notice, or at least, that they appeared and were heard on the appeal, this is fatal to the order. *Rex v. Andover, Coup.* 550. i. 280.

23. Where a person is *overcharged* in a poor-rate, the sessions may, under the 17 Geo. 2. c. 18. amend the rate on appeal, by lessening the sum at which he is assessed. *Rex v. Chestnut*, 2 T. R. 623. i. 285.

24. The justices at sessions, on stating a case upon an appeal from a poor-rate, cannot permit a material fact to be omitted in order to bring a general question before the court, although the counsel on each side consent to it. *Rex v. Francis Hill, Cowp.* 613. i. 280.

25. The sessions dismissing an appeal against a rate on one ground will not render the rate valid, if it be radically bad on another. *Rex v. Newcomb*, 4 *T. R.* 368. i. 289.

26. The sessions, on appeal for not rating personal property, must be satisfied that the property belongs to the person intended to be rated, and that it is productive of profit, before they can quash the rate. *Rex v. Dursley*, 6 *T. R.* 53. i. 290.

27. And in a late case, where the appeal was on the ground that a particular person was not rated for his stock in trade, the court held that the sessions ought to have amended and not quashed the rate which they had done. It was said that, as to the rateability of stock in trade, that had been settled by *Rex v. Darlington*, 6 *T. R.* 468, if it be ascertained to be profitable, that the objection in the present case was applicable to one person, and the justices should have amended instead of quashing the rate; and it was further said that the stat. 41 *Geo. 3. c. 23.*, was passed for the very purpose of enabling them to do so, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. *Rex v. Ambleside*, 16 *E. R.* 380. *supp.* 95.

28. It was formerly held that only those persons who were actually damnified by the acts of the churchwardens, overseers or justices, could appeal under 43 *Elix. c. 2.* i. 266, *note*.

29. But the 17 *Geo. 2. c. 23.* was passed to remedy this defect, under which statute it is now determined that, in the case of a poor-rate, any person, though not the party grieved, may appeal. *Rex v. Canterbury, Burr.* 2290. i. 279.

30. And all occupiers, jointly interested in the subject matter of an appeal against a poor rate, may join in preferring it to the sessions. See 2 *Nolan*, 343.

31. And may give a joint notice of appeal. *Rex v. Sussex*, 15 *E. R.* 206. *supp.* 1.

32. It was also held formerly that the appeal was not confined to the next quarter-sessions, but might be brought at any distance of time. *Rex v. St. Giles*, i. 273.

33. But it is now settled that the appeal against a poor-rate must be in all cases to the next sessions, for the 17 *Geo. 2. c. 23.*

has, in this respect, repealed the 43 *Elix. c. 2. s. 4.* which left the appeal to any sessions. *Rex v. Coode and others, i. 281.*

34. An appeal against a poor's rate in *London* or in *Middlesex*, must be made as in all other counties, that is, to the next general quarter-sessions, although the stat. 17 *Geo. 2. c. 38. s. 4.* in its terms gives the appeal to the next general or quarter-sessions, and although, in the two counties named, there are four general, as well as four general quarter-sessions. *Rex v. Justices of London, 15 E. R. 632. supp. 2.*

35. By *next sessions* it seems is to be understood the next sessions for which the party is in time to give an effectual notice of appeal after the publication of the rate; and one intervening day between such publication and the next immediate quarter-sessions, is not sufficient time for that purpose. *Rex v. Sussex, 15 E. R. 206. supp. 1.*

36. By a local act the management of the poor of a town was vested in certain persons who were empowered to make rates, and an appeal was given to the parties aggrieved to the town sessions, against every such rate, and a further appeal, if required, to the county sessions. An appeal against four rates being entered at the *January* town sessions, four grounds of appeal were specified in the notice; the party being dissatisfied, made a further appeal to the county sessions, and two other grounds of appeal were added, the fourth being that the party was rated in respect of his lands in a higher proportion than all the other inhabitants mentioned in the rate. The court held, first, that one appeal against the four rates was sufficient; 2dly, that it was not necessary to give notice of appeal to all the inhabitants mentioned in the rate; thirdly, that the appellant must, at the county sessions, be confined to the original grounds of appeal at the town sessions. *Rex v. Suffolk, 1 B. & A. 640.*

37. It is by the making of the rate that the party is aggrieved, and he must seek his relief by appeal; if he do not, and the rate be erroneous, he cannot maintain trespass against the overseer for levying it. *Durrant v. Boys, 6 T. R. 538. i. 292. Rex v. Micklefield, i. 284. See Hutchins v. Chambers, Burr. 579.*

38. If an appeal be lodged under 43 *Elix. c. 2.* and dismissed for informality, the party cannot have a second appeal. *Rex v. Justices of Yorkshire, 3 T. R. 776. i. 285.*

39. When the appeal comes on to be heard, the respondent begins by supporting the rate. *Rex v. Newbury, 4 T. R. 475. i. 289.*

III. *In the Case of Overseers' Accounts.*

1. See the 43 *Eliz. c. 2. ss. 6. 8.* (*ante* title Appeal, in the case of the poor-rate, *Arts. 1, 2.*) also 17 *Geo. 2. c. 38 ss. 4, 5, 6, 7;* and the case of *The King v. the Justices of Essex*, (*ib. Arts. 4. 6, 7, 8. 5.*) and with respect to notices of appeal, see 41 *Geo. 3. c. 23. ss. 4, 5.* (*ib. Arts. 12, 13.*)

2. In appealing against overseers' accounts, with regard to what shall be considered as the next sessions, the court held, in a case where the accounts were not allowed till the last day when an effectual notice of appeal to the then next sessions could have been given, and where the party objecting did not appear to have had notice of such allowance, that a notice of appeal to the next subsequent sessions for which an effectual notice of appeal could be given was good. *Rex v. Justices of Dorsetshire*, 15 *E. R. 200. supp. 53.*

3. By 50 *Geo. 3. c. 49. s. 1.* reciting the 17 *Geo. 2. c. 38.* it is enacted, That in all cases where any such account as is mentioned in the preamble of that act, is required to be made and yielded, and to be signed and attested by virtue of the said recited act, every such account shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, dwelling in or near the parish or place to which such account shall relate, at a special sessions for that purpose to be holden within the fourteen days appointed by the said last recited act for delivering in such account; and such justices shall and they are hereby authorized and empowered, if they shall so think fit, to examine into the matter of every such account, and to administer an oath or affirmation to such churchwardens and overseers of the truth of such account, and to disallow and strike out of every such account all such charges and payments as they shall deem to be unfounded, and to reduce such as they shall deem to be exorbitant, specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same is disallowed or reduced; and it shall be lawful for such two or more justices, and they are hereby required to signify their allowance and approbation of any such account under their hands, and to sign and attest the caption of the same at the foot of such account, in manner directed by the said last recited act: And in case such churchwardens and overseers or any of them, shall refuse or neglect to make and yield up or to submit such account, or to verify the same by oath as afore-

said, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods, chattels or other things, which on the examination and allowance of such account in manner aforesaid shall appear to be remaining in the hands of such churchwardens or overseers, it shall and may be lawful for any two or more justices of the peace to commit him, her or them, to the common gaol, until he, she or they shall have made and yielded such account, and verified the same as aforesaid, or shall have delivered over such goods, chattels and other things which shall appear to be so remaining in his, her or their hands as aforesaid; and in case such churchwardens and overseers or any of them, shall refuse or neglect to pay to their successors within fourteen days from the signing and attesting such account, any sum or sums of money or arrearages which on the examination and allowance of such account in manner aforesaid, shall appear to be found to be due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, it shall and may be lawful for the subsequent churchwardens and overseers by warrant from any two or more justices of the peace, to levy all such sum and sums of money by distress and sale of the offenders' goods, rendering to the parties the overplus; and in default of such distress, it shall be lawful for any such two justices of the peace, to commit the offender or offenders to the common gaol of the county, there to remain without bail or mainprize, until payment of such sum or sums of money or arrearages as aforesaid.

4. By s. 2. it is provided and enacted, That if such churchwardens or overseers, or any of them, shall feel themselves, himself or herself aggrieved by the disallowance or reduction of any such charges or payments, and be desirous of appealing against any order in that respect, made by any such two or more justices of the peace, it shall and may be lawful for him, her or them, to enter an appeal against such order, at the next general or quarter-sessions to be holden next after the tenth day from the making of such order, he, she or they having first paid or delivered over to the succeeding churchwardens and overseers, such sum and sums of money, goods, chattels and other things, as on the face of the account which shall have been submitted by him, her or them, to such two or more justices in manner aforesaid, shall appear and be admitted to be due and owing from him, her or them, or remaining in his, her or their hands, and having also entered into a recognizance before one or more such justice or justices, with two sufficient securities to be approved of

by such justice or justices before whom such recognizance shall be acknowledged, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter-sessions, and abide by such order as shall at that or any subsequent sessions be made on such appeal; and it shall and may be lawful for the justices of the peace assembled at such general or quarter-sessions, on proof of the matters aforesaid, and on the production of such recognizance and proof of the same having been duly entered into, to adjourn such appeal if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole or in part, as to such justices at such sessions shall seem just; and in any such case, the said justices, at such sessions, may (if they shall think fit) make an order that such churchwardens and overseers shall have the costs by them incurred, upon any such appeal defrayed out of the poor rates of the parish or place; and the order of the general quarter-sessions in execution of the powers given to them by this act shall be binding on all parties.

5. By s. 3. it is provided and enacted, That nothing herein contained shall take away or be construed to take away any power of appeal against any such account, by any other person entitled to appeal against the same by virtue of the said recited acts or either of them.

6. By s. 4. it is further enacted, That every mayor, bailiff or other head officer of every town and place corporate and city in *Great Britain*, or any two magistrates of such town or place corporate or city, being justice or justices of peace respectively, shall have the same authority by virtue of this act within the limits and precincts of their jurisdictions as is by this act limited, prescribed or appointed to justices of the peace of the county, or any two or more of them, for the execution of this act; subject nevertheless to an appeal to the general or quarter-sessions in every such town or place corporate or city respectively as aforesaid: Provided always, that in any town or place corporate or city, where there are not four justices of the peace, it shall and may be lawful for any person or persons, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter-sessions of the peace for the county, riding or division wherein such town or place corporate or city is situate.

7. And by s. 5. it is further enacted, That no *certiorari* shall be granted to remove any order or proceeding of any general or quar-

ter-sessions or of any justices, made or had under this act, into any superior court of record; but that all orders and proceedings of such sessions, and all orders and proceedings of such justices (subject to such appeal as aforesaid) under this act, shall be final and conclusive to all intents and purposes.

8. And by s. 6. it is provided and enacted, That nothing in this act contained shall extend or apply, or be construed to extend or apply to the accounts of any churchwarden or overseer of the poor in any parish or place where, by the provisions of any act or acts relating to the poor of such parish or place, or by the construction of any such act or acts, such churchwardens and overseers are exempted from the rendering the accounts required by the hereinbefore recited acts of the forty-third year of the reign of her late Majesty Queen *Elizabeth*, and of the seventeenth year of the reign of his late Majesty King *George* the Second, or either of them; any thing hereinbefore contained to the contrary notwithstanding: Provided also, that nothing in this act contained shall extend or be construed to extend to the city of *London*.

9. By s. 7. it is provided and enacted, That nothing in this act contained shall alter or repeal any of the provisions or regulations contained in the said recited acts of the forty-third year of the reign of her late Majesty Queen *Elizabeth*, and of the seventeenth year of the reign of his late Majesty King *George* the Second, or either of them, other than and except only such provisions or regulations as are expressly mentioned in this act, and so far as the same are expressly amended or altered by this act.

10. The sessions cannot either under 43 *Eliz. c. 2.* or 17 *Geo. 2. c. 38.* make any order on an appeal against overseers' accounts, unless a previous application has been made to two justices, under 43 *Eliz. c. 2.* *Rex v. Whitecar, Burr. 1365. i. 308.*

11. It is said that the sessions may remit the settlement of the accounts to the two justices to whom they were first submitted, although they have been allowed by two other justices. *Rex v. Townsend, i. 304.*

12. And, when the balance is ascertained, may order the overseers to pay it over; but they must execute their judgment in the same way that the two justices would have done. *Rex v. Hedges, Salk. 533. i. 304.*

13. If the sessions do not order the balance to be paid over to the succeeding overseers, two justices out of sessions may be compelled by *mandamus* to enforce the payment thereof. For the

effect of the appeal is the ascertaining the quantum of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce payment of the balance. *Rex v. Carter*, 4 T. R. 246. i. 314.

14. But they cannot order the overseers to pay over a sum charged as paid which in fact has not been paid. *Rex v. Moulsworth*, i. 304.

15. It seems that, upon appeal to the sessions against overseers' accounts, it should appear on the face of the order that the accounts have been before two justices, and that the appeal is from their decision, since the sessions cannot take up the matter originally. *Rex v. Bartlett*, i. 306.

"If authority be given to two justices to do an act and no appeal be given, then it may commence at sessions; but if an appeal be given, then it cannot be begun at sessions." By Lord Hardwicke, *ibid.*

IV. *In the Case of Vagrant Passes.*

1. By 17 Geo. 2. c. 5. s. 26. any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter-sessions of the county, riding, liberty or division, giving reasonable notice thereof, whose order thereupon shall be final.

2. A general appeal will not lie against a vagrant pass, since such a power of appeal, it is said, would be inconsistent with the 11th section of the last-mentioned statute.—The only way by which the vagrant can be removed from the parish to which he is passed, is by an order of removal by two justices, which may be obtained as soon as his settlement is discovered, and from this order of removal an appeal will lie. The mere pass-warrant is no adjudication, which is the proper subject of an appeal. *Rex v. Ringwould*, B. S. C. 840. ii. 676. See also *Rex v. Upmerdon*, ii. 675.

Quære, whether an appeal would lie in the case of a foreigner sent under a false examination to a parish to which he did not belong? *St. Lawrence Jewry v. Edgware*, ii. 677. See tit. *Vagrant*.

V. *In the Case of an Order of Relief.*

1. By 18 Geo. 3. c. 19. s. 5. if the overseers, &c. make any objection to the accounts of constables, &c. for monies expended in relieving the poor, an appeal may be brought at the next general quarter-sessions, &c. See the section at length, tit. *Constable*, Art. 5.

2. No appeal lies from an order of maintenance made by one

justice; for by the 3 *William and Mary*, c. 11. a single justice has, in this respect, a concurrent jurisdiction with the justices; and the *stat. 9. Geo. 1. c. 7. s. 4.* makes no alteration in this respect; neither is any appeal given by either statute, nor in principle could there be in any case where the court of quarter-sessions exercise original jurisdiction, since in such case it would be *ab eodem ab eundem*. By *Wilkes, Justice. Rex v. North Shields, Cald. 68. i. 408.*

3. In a late case, where a motion was made for a *mandamus* to the justices at sessions to hear an appeal against an order of relief, (which they had dismissed under the idea that they had no jurisdiction) the rule was refused, the court saying, that, if in every case of an order for relief an appeal would lie, this would divert the funds designed for the relief of the poor into other channels; that the order, in this case, was not in *perpetuum*, but to pay until further orders; and they asked why the overseers could not go back to the quarter where the order was made, and point out that the pauper's residence was in another parish, and obtain a fresh order? *Rex v. Devon. 4 M. & S. 421. supp. 209.*

4. By 43 *Geo. 3. c. 47. s. 26.* If any person shall find himself aggrieved by any order of any justice or justices of the peace for the payment of any sum of money directed by that act to be paid to the families of militia men, &c. it shall and may be lawful for such person to appeal to the justices of the peace at the next general or quarter-sessions of the peace for the same county, riding, division, city or place when any demand in pursuance of such order shall be made as aforesaid, who are hereby empowered to hear and finally determine the same; and it shall be lawful for the said justices, at such sessions, to award and order, where they shall see occasion, the payment of such sum or sums of money which such appellant, as churchwarden or overseer of the poor, ought to have paid in pursuance of such order made by virtue of this act, and hath neglected to pay in manner aforesaid.

VI. In the Case of an Order of Bastardy.

1. See 18 *Eliz. c. 3. s. 2.* also 6 *Geo. 2. c. 31. s. 1.* given under tit. *Bastard. Arts. 32, 33.*

2. In the case of bastards born in hospitals, it is enacted by 13 *Geo. 3. c. 82. s. 7.* That if any person or persons shall think himself or themselves aggrieved by such removal or distress had or made in pursuance of this act, every such person may appeal to the quarter-session of the peace to be holden for the county, riding, division,

city, corporation or place wherein he shall have suffered such grievance, within four months after the fact done, by which he shall think himself so aggrieved, such appellant first giving or causing to be given, fourteen days notice at the least, in writing, of the intention to bring such appeal, and of the matter thereof, to the party or parties against whom such appeal is intended to be brought, and within two days next after such notice given, entering into recognizance, with two sufficient sureties conditioned to try such appeal, and to abide the order of, and to pay such costs as shall be awarded by the justices at such quarter-sessions; and the said justices shall then hear and determine the causes and matters of appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper, and the determination of such justices so made shall be final, binding and conclusive to all intents and purposes whatsoever.

3. By 49 Geo. 3. c. 68. s. 5. (for the provisions of which act generally, see title *Bastard*. Arts. 37, 38. 41, 42, 43,) it is enacted, That any person or persons who shall think himself, herself, or themselves aggrieved by any order made by such justices as aforesaid under the provisions of this act, and not originating in the quarter-sessions, may appeal to the next general quarter-sessions of the peace to be holden for the county where such order shall be made, on giving notice to such justices or to one of them, and also to the churchwardens and overseers of the poor of the parish on whose behalf such order shall have been made, or to one of them, ten clear days before such general quarter-sessions of the peace at which such appeal shall be made, of his, her, or their intention of bringing such appeal, and of the cause and matter thereof, and entering into a recognizance within three days after such notice, before some justice of the peace for such county, with sufficient surety conditioned to try such appeal, and abide the judgment and order of, and pay such costs as shall be awarded by the justices at such quarter-sessions, which said justices at their said sessions, upon proof of such notice being given, and of entering into such recognizance as aforesaid, shall and they are hereby required to proceed in, hear, and determine the causes and matters of all such appeals, and shall give such relief and costs to the parties appealing or appealed against as they in their discretion shall judge proper; and such judgments and orders therein made shall be final, binding, and conclusive to all parties concerned, and to all intents and purposes whatsoever.

4. a. The court held in a late case that the ten days are to be taken exclusively both of the day of serving the notice, and the day of holding the sessions. *Rex v. Justices of Herefordshire*, 3 B. & A. 581.

4. b. By s. 7. it is further enacted, That no appeal in any case relating to bastardy shall be brought, received, or heard at the said quarter-sessions, unless such notice shall have been given, and such recognizance shall have been entered into in manner aforesaid, according to the provisions of this act.

5. By the words "next general sessions" in the 18 *Eliz. c. 3.* is intended that the order made by two justices must be confirmed or discharged at the next general quarter-sessions for that part of the county where it was made, and not at the sessions in the county; "for it would be mischievous in many counties where there are several sessions in distinct parts of the county." *Rex v. Coyston*, 1 Sid. 149. i. 504.

6. The next sessions are the sessions next after the time when notice was given to the reputed father of his being so adjudged. *Rex v. Browne*, Salk. 400. i. 504.

7. And the appeal must be to the next general sessions after such notice, and not the next quarter-sessions. *Rex v. Shaw*, Salk. 452. i. 505.

8. But if the reputed father appeal to the general quarter-sessions, the court will not presume that a general sessions intervened between the time of making the original order and the appeal. And with reference to the last cited case, (*Rex v. Shaw*) Lord *Kenyon*, Ch. J. said that it did not appear to be one of the most authentic in *Salkeld's Reports*. *Rex v. Chichester*, 3 T. R. 496. i. 505.

9. If the sessions, on appeal, make a new order of bastardy, the reputed father cannot appeal to the next subsequent general sessions. *Pridgeon's Case*. *Bulstr.* 255. i. 506.

10. For against such an original order of bastardy made at the sessions, no appeal whatsoever will lie. *Wood's Case*, *ib.* 355. i. 507.

11. The sessions, with regard to the fathers of bastards, must proceed upon the recognizance on the 18 *Eliz. c. 3.*; but if they proceed on the 3 *Car. 1. c. 4.* they may commit as the two justices might have done, that is, unless the party put in security to perform the order, or to appear at the next sessions. *Rex. v. Weston*, Salk. 122. i. 507.

12. An order of bastardy made by two justices, on being removed

by *certiorari* into the King's Bench, may be quashed for objections on the face of it, although no appeal have been made to the sessions, provided the time, within which such an appeal might have been brought, has elapsed. *Rex v. Stanley, Cald.* 172. i. 512.

13. Upon an appeal against an order of filiation, the respondents are to begin by supporting their order, as in all other cases. *Rex v. Knill*, 12 *E. R.* 50. *supp.* 20.

VII. In the Case of Apprenticeships.

1. See the 5 *Eliz. c. 4. s. 35.* (title *Apprentice, Art. 96.*) respecting the right of appeal given both to the master and the apprentice, in cases of any supposed hardship in binding out, or compelling masters to receive apprentices, or in adjusting disputes between masters and their apprentices.

2. The apprentice may appeal to the justices of the place in which he lives, although the binding were in a different city or county. *Rex v. Collingbourne, Str.* 663. i. 573.

3. See also 20 *Geo. 3. c. 19. s. 5.* (title *Apprentice, Art. 99.*) as to appeal given in the case of parish apprentices, or such with whom no larger a sum than five pounds has been given.

4. Also see 6 *Geo. 3. c. 25. s. 5.* (title *Apprentice, Div. VI.*) giving an appeal in case of the supposed undue exercise of authority, in committing persons who having contracted to work for any time absent themselves, &c.

5. By 8 & 9 *W. 3. c. 30. s. 5.* the person to whom any poor child is bound, pursuant to that act may appeal to the next general or quarter-sessions of the peace for that county or riding, whose order therein shall be final and conclude all parties.

6. By 30 *Geo. 3. c. 56.* all persons, to whom any children shall be appointed to be bound, in pursuance of any act for the relief of the poor in any particular district in England, may appeal to the next general or quarter-sessions.

7. See 32 *Geo. 3. c. 57. ss. 12. 14.* (title *Apprentice, Div. VIII.*) also *s. 17.* of 56 *Geo. 3. (ibid.)* as to the power of appeal given to any person aggrieved by any thing done, &c. in pursuance of those acts, both for the better regulation of parish apprentices.

8. See 2 & 3 *Anne, c. 6. s. 12.* (title *Apprentice, Div. IX.*) as to complaints by and against apprentices to the sea-service.

9. See 7 *Jac. 1. c. 3. s. 7.* (title *Apprentice, Div. X.*) as to remedy in case of abuses of trust where apprentices are bound out by public charities.

10. See 28 Geo. 3. c. 48. s. 16. (title *Apprentice*, Div. XI.) as to appeal in the case of apprentices to chimney sweepers.

11. It seems that an appeal from the master will not lie against a parish indenture, after the execution of the counter-part by himself, since he cannot contradict his own deed. *Rex v. Saltern*, i. 613.

VIII. In the Case of Orders of Removal.

1. By 13 & 14 Car. 2. all persons who think themselves aggrieved by an order of removal, may appeal to the next quarter-sessions.

2. By 3 W. & M. c. 11. s. 9. if any person or persons shall find him, her, or themselves aggrieved by any determination, which any justice or justices of the peace shall make in any of the cases mentioned in that act, the said person or persons may appeal to the next general quarter-sessions of the peace, to be held for the said county, riding, or division, city, or town corporate, who, upon full hearing of the said appeal, shall have full power finally to determine the same.

3. By 8 & 9 W. 3. c. 30. s. 6. it is enacted, That the appeal against any order for the removal of any poor person from out of any parish, township or place, shall be had, prosecuted and determined, at the general or quarter-sessions of the peace for the county, division, or riding, wherein the parish, &c. from whence such poor person shall be removed, doth lie, and not elsewhere; any former law or statute to the contrary thereof in any wise notwithstanding.

4. By 8 & 9 W. 3. c. 30. s. 3. for the more effectual preventing of vexatious removals and frivolous appeals, it is enacted, That the justices of the peace of any county or riding, in their general or quarter-sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter-sessions, award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given as aforesaid, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city or town corporate, or elsewhere,

out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty or town corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced and proved by some credible witness upon oath, by warrant under his hand and seal to cause the money mentioned in that order to be levied by distress and sale, &c.; and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of twenty days.

5. And by 9 Geo. 1. c. 7. s. 9. for the preventing of vexatious removals, it is enacted, That if the justices of the peace shall, at their quarter-sessions, upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person or persons was or were unduly removed, that then the said justices shall, at the same quarter-sessions, order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made for and towards the relief of such poor person or persons, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner, as costs and charges upon an appeal are prescribed to be recovered by the 8 & 9 W. 3. c. 30.

6. By 9 Geo. 1. c. 7. s. 7. the justices of the peace within the liberty of the borough of *St. Peter* and hundred of *Nassaborough* in the county of *Northampton*, may hear and determine all appeals to them made against any order made for removal of any poor person in their quarter-sessions, as they might have done before the making of 8 & 9 W. 3. c. 30. any thing therein or in this present act contained to the contrary thereof, in any wise notwithstanding.

7. An appeal against an order of removal only authorizes the sessions to confirm or quash the order. ii. 709 to 716.

8. An appeal was, *with the consent of the parties*, referred to the consideration of three justices out of sessions, and it was held that this might be done; but it was said that, had the sessions so referred it of their own accord, without the consent of the parties, it could not have been supported, since the justices were not warranted to delegate their authority. *Re v. Northampton, Cald.* 30. ii. 716.

9. By 9 Geo. 1. c. 7. s. 8. no appeal or appeals from any order or

orders of removal of any poor person or persons whatsoever, from any parish or place to another, shall be proceeded upon in any court of quarter-sessions, unless reasonable notice be given by the churchwardens or overseers of the poor of such parish or place, who shall make such appeal, unto the churchwardens or overseers of the poor of such parish or place from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter-sessions, to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter-sessions, and then and there finally hear and determine the same.

10. The sessions cannot refuse to receive the appeal for defect of notice; for the notice relates only to the hearing and not to the receiving the appeal. *Rex v. Justices of Gloucestershire*, ii. 719.

11. And therefore they are bound to receive an appeal, although no notice whatever has been given. *Rex v. Huntingdonshire*, ii. *ibid.*

12. But where on a motion for leave to lodge an appeal and to respite the hearing thereof to the next session, the sessions thought that the appellants had sufficient time to come prepared to try the appeal, and to give notice to the respondents, and yet only intended to enter and adjourn the appeal, and therefore that they were not bound to receive it and to adjourn to the next sessions, it was held that they had judged rightly. *Rex v. Justices of North Riding of Yorkshire*, ii. 720.

13. This case, however, seems now to be over-ruled, for, subsequently, the court gave their opinion that the justices are bound by the statute 9 Geo. 1. c. 7. to receive and adjourn an appeal made to the next sessions after an order of removal against such order, if no notice have been given to the respondent, although they should be of opinion that the order was executed in sufficient time before the sessions, to have enabled the appellants to give reasonable notice of their appeal to the respondents. *Rex v. Shropshire*, 7 E. R. 549. (*Printed by mistake in the Report, Staffordshire.*)

14. The sessions have a discretion as to what is a reasonable time for giving notice of appeal, subject, however, to the visitatorial jurisdiction of the court of King's Bench in the exercise of such discretionary power. By Lord Ellenborough, Ch. J. *Rex v. Wiltshire*, 10 E. R. 404. *supp.* 5.

15. Where an appeal against an order of removal had been entered and adjourned once by virtue of the stat. 9 Geo. 2. c. 7. s. 8.

and the sessions dismissed the appeal at the adjourned sessions without hearing it, on the ground that they had no authority to try it for want of a sufficient notice to the respondents, according to a new rule of practice promulgated two sessions before, but then first acted upon, and which was not known to the appellant's attorney who had given the formerly usual notice; the court granted a *wandamus* to the justices, to enter continuances and hear the appeal. *Rex v. Justices of Wiltshire*, 10 E. R. 404. *supp.* 5.

16. But where a pauper was removed on the 4th of *January* under an order of the preceding day, and on the 5th the overseers met to consider of the settlement, and on the 6th gave notice to the removing parish of trying an appeal against the order at the next sessions which were on the 13th, and the removing parish was seven miles from the place where the appellant's attorney lived, and ten miles from the appellant parish; and the practice of the sessions was to give eight days notice, one inclusive, the other exclusive, it was held that the sessions could not dismiss the appeal on the ground that notice might have been given in time but ought to adjourn it; for the 9 *Geo.* 1. c. 7. s. 8 expressly says, if reasonable notice have not been given, they shall adjourn the appeal to the next quarter-sessions. *Rex v. Justices of Buckinghamshire*, ii. 720.

Note. The sessions had, in this case, admitted that reasonable notice had not been given.

17. The want of time to enquire into the facts of the case, seems in one instance to have been urged in vain as an excuse for not giving notice of appeal before the ensuing sessions. *Rex v. Silchester*, ii. 719.; but see post. *Art.* 22.

18. The appeal should be to the *next* sessions; and if an order be made before, and not served till after a sessions, the sessions next after the service of the order, is the next sessions within the act. *Rex v. Monk's Risboro*, ii. 723.

19. And the court will intend it to have been the next sessions unless the contrary appear. *Milbrook v. St. John's Southampton*, ii. 723.

20. What are to be considered the *next* sessions, however, must depend much upon the particular circumstances of each case; thus where an order was made four days before the sessions commenced, and they lasted three days more, the contending parties not being more than ten miles from each other, and the place of the sessions not above eight miles distant from the party complain-

ing, the appeal not having been made to that sessions, the court held that the justices were perfectly right in refusing to hear it at the sessions next following. *Rex v. Wilts*, ii. 725.

21. But if, from the distance between the parish removed to and the place where the sessions are held, there be not sufficient time to allow of lodging an appeal at the next sessions in fact, the ensuing sessions are to be considered the next sessions, being the next possible sessions. *Rex v. East Riding of Yorkshire, Doug.* 192. ii. 727.

22. An order of removal was served on the appellant parish on Saturday, and the sessions were holden on the following Tuesday, the appellant parish being thirty-seven miles distant from the place where the sessions were holden; there was no appeal to those sessions, although by the practice of those sessions a motion to enter and respite an appeal might have been made at any time during their continuance, and the justices refused to receive the appeal at the next ensuing sessions, on the ground that they were not the next sessions contemplated by the 13 & 14 Car. 2.; but the court held that they ought to have received it and granted a *mandamus*. Lord *Ellenborough*, Ch. J. saying that the next sessions must mean the next practicable sessions; that the parish officers ought to have a reasonable time for making the necessary enquiries whether it would be proper to appeal or not, and that they were not bound to devote Sunday to such a purpose; with respect to the objection that the appeal ought at all events to have been entered and respited, that this was wholly unnecessary, inasmuch as a useless expence would have been thereby incurred without benefit to either party. *Rex v. Justices of Essex*, 1. B. & A. 210.

23. Where an order of removal was executed three days before the sessions, in a parish twenty miles distant from the place where the sessions were holden, and there was no appeal to those sessions, the court thought that the justices were not bound to receive the appeal at the ensuing sessions, for the appeal might have been entered at the former sessions and adjourned. *Rex v. Justices of Herefordshire*, 3 T. R. 504. ii. 727.

24. But where an order of removal was dated the 24th of September, and executed on the afternoon of the 3rd of October, at a place 54 miles distant from the place where the sessions were to be holden on the 6th of October, the court said, that the justices ought to have received the appeal at the next sessions but one subsequent to the execution of the order; since some reasonable time

ought to be allowed to the parish appealing, to enable them to inquire whether or not it would be proper to enter an appeal. *Rex v. Justices of Flintshire*, 7 T. R. 200. ii. 729.

25. In another case where an order of removal was made and executed on the day before the day of holding the *Epiphany sessions*, and the appeal was entered and due notice given before the *Easter sessions*, at which sessions the justices refused to hear the appeal, on the ground that it should have been entered at the *Epiphany sessions*, the court granted a mandamus to the justices to receive such appeal, notwithstanding it appeared that the *Epiphany sessions* continued 14 days, and were afterwards adjourned to distant days, and that it was the practice of the sessions to allow appeals to be entered at any time during their continuance, or at the adjournments, and respite the hearing till the next sessions.

"The statute does not contemplate the continuance of the sessions. It enacts, that the party may appeal to the 'next sessions,' without adding 'or some adjournment thereof.' It takes the holding of the sessions at the point of time to which it refers the appeal, and the sessions are always considered in law as one day, to whatever period they may by accidental causes be extended. The appellant parish ought to have a reasonable time for considering whether they will appeal or not; in this case there was not reasonable time for that purpose." *Per Lord Ellenborough*, Ch. J. *Rex v. Justices of Surrey*, 1 M. & S. 479. *supp.* 7.

26. But where an order of removal from a township in *Yorkshire* to a parish in *Middlesex* was executed on the 12th of *January*, and the *Yorkshire Epiphany sessions* were holden on the 18th, and there was no appeal until the *Easter sessions*, when the sessions refused to receive it; the court would not grant a mandamus to them to do so, it appearing that the appellants were not then ready to enter and try the appeal, but only to enter and respite. It seems, however, that had the appellants been ready to try at the *Easter sessions* that the appeal ought to have been heard. *Rex v. Justices of the West Riding of Yorkshire*, 4 M. & S. 327.

27. In one case the order of removal was not executed until the Monday (3d *October*) and the sessions for the county of *Flint*, according to the usual course, would have commenced on the Tuesday following, although it so happened that on this occasion they did not commence until the Thursday following; under all the circumstances, Lord *Kenyon*, Ch. J. said, that the justices ought to have received the appeal, since the appellants might fairly have

supposed that the sessions would commence on the very day next after the execution of the order. *Rex v. Flintshire*, 7 T. R. 204 ii. 729.

28. And where an order of removal was made before, but the pauper was not in fact removed until after the sessions next ensuing the making of the order, it was held that the appeal might be to the next sessions after the removal, since it was by the removal that the parties were aggrieved. *Rex v. Norton*, Str. 83. ii. 72. See also *Milbrook v. St. John's*, ib.; and *Rex v. Monk's Risborough*, ib.

29. In one case an order, made at the general quarter-session held by adjournment, was quashed because it did not appear that this was the next general quarter-sessions; for it was said that it might be that the sessions was begun and continued by adjournment before the order was made. *Rex v. Hinderclive*, ii. 723.

30. If a sessions be adjourned, and no sessions held on the adjournment day, an appeal to the sessions subsequent to the adjournment is not to the next sessions. *Rex v. West Torrington*, ii. 724.

31. An appeal against an order of removal made by corporation justices, must be to the next sessions for the county, and not to the next sessions for the corporation. *Rex v. Wendover*, Salk. 490 ii. 722. See also *Rex v. East Donyland*, ii. 724.

32. Where the quarter-sessions are holden at two different places in the county, the one being an adjournment only of the other and an order of removal is executed after the beginning of the original sessions, an appeal at the next ensuing adjourned sessions is in time and ought to be received. *Rex v. Justices of Sussex*, 1 T. R. 107. ii. 728.

33. The time limited is not suspended by the matter being referred to arbitration, if the award be not final. *Rex v. Devonshire* ii. 726.

34. The pauper removed may appeal against the order as well as the parish. *Rex v. Hartfield*, ii. 716.

35. Where an order was made without saying *upon the appeal of the party grieved*, the court seemed inclined to quash it for this defect; but, upon being told that most of the precedents were so they for that reason, and that only, as the Chief Justice declared, confirmed the order. *Rex v. Almanbury*, Str. 96. ii. 717.

36. See as to appeal against orders of removal, &c. of debtors, 52 Geo. 3. c. 101. s. 6. (title *Order of Suspension*.)

IX. *Against an Order of Suspension.*

1. See under title *Order of Suspension* the stat. 35 Geo. 3. c. 101. s. 2. and power of appeal there given.

2. It has been determined that the right of appeal is not taken away, although the party neglect to give notice within the three days mentioned in the act last referred to; the meaning of that clause being that, if the party aggrieved and intending to appeal will give notice of appeal within three days after demand made, he shall be relieved from the inconvenience of a distress, but if he neglect to give such notice, he only subjects himself to that inconvenience; his right of appeal is not taken away, and if he afterwards think proper to appeal within the time allowed for appeals against orders of removal, he is expressly empowered to do so. *Rex v. Bradford*, 9 E. R. 97. *Supp.* 109.

3. By 49 Geo. 3. c. 124. s. 2. when the execution of any order of removal shall be suspended, the time of appealing against such order shall be computed, according to the rules which govern other like cases, from the time of serving such order, and not from the time of making such removal under and by virtue of the same.

4. See further 52 Geo. 3. c. 101. s. 6. (title *Order of Suspension*) with respect to the appeal in cases of orders of removal and suspension.

X. *Miscellaneous.*

See title *Constable*, Art. 5. as to the right of appeal by overseers against the accounts of constables.

For the practice on appeals, see 2 *Nolan*, c. 37. s. 4. &c.

See also titles of this work *Sessions*, *Justices*, &c.

APPRENTICE.

- I. WHO SHALL TAKE APPRENTICES.
 - II. WHO ARE COMPELLABLE TO SERVE.
 - III. OF THE INDENTURES, THEIR FORM, REVOCATION AND DISSOLUTION.
 - IV. OF THE STAMP DUTY.
 - * V. OF THE APPRENTICE FEE.
 - VI. JURISDICTION OF JUSTICES.
 - VII. OF ASSIGNING APPRENTICES, AND OF THE DEATH AND INSOLVENCY OF THE MASTER.
 - VIII. OF PARISH APPRENTICES.
 - IX. OF APPRENTICES TO THE SEA SERVICE.
 - X. _____ PUBLIC CHARITIES.
 - XI. _____ CHIMNEY SWEEPERS.
 - XII. _____ IN COTTON AND WOOLLEN MILLS.
-

I. Who shall take Apprentices.

*Husband-
men.*

1. By 5 Eliz. c. 4. s. 25. every person being an householder, and having and using half a plough-land at the least in tillage, may have and receive as an apprentice any person above the age of ten years, and under the age of eighteen years, to serve in husbandry, until his age of one and twenty years at the least, or until the age of twenty-four years, as the parties can agree; and the said retainer and taking of an apprentice to be made and done by indenture.

2. By s. 26. every person being an housholder, and twenty-four years old at the least, dwelling or inhabiting, or who shall dwell and inhabit in any city or town corporate, and using and exercising any art, mystery or manual occupation there, shall and may during the time that he shall so dwell and inhabit in any such city or town corporate, and use and exercise any such mystery, art or manual occupation, have and retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same, or in any other city or town that now is, or hereafter shall be and continue incorporate, to serve and be bound as an apprentice after the custom and order of the city of London, for seven

* Registering See Addenda F

years at the least, so as the term and years of such apprentice do not expire or determine afore such apprentice shall be of the age of twenty-four years at the least.

3. This clause, however, relates only to such persons binding themselves apprentices as are under age, and not to adults. Lord *Ellenborough*, Ch. J. "Can it be maintained that the statute of *Eliz.* was intended to limit the powers of an adult to contract for his labour? the statute may perhaps be thought capable of a variety of bad interpretations, but I do not think it can be successfully argued that one of its meanings was to restrain the binding, or, I should rather say, the contracting of adults for their own service." *Smalley v. Gooden*, 3 M. & S. 189.

4. No action is maintainable for harbouring an apprentice, as such, if the master were not, at the time of binding, of the age of twenty-four years, and a housekeeper, as required by 5 *Eliz. c. 4.* *Gye v. Foston*, 4 T. & A. 876.

5. But by s. 27. it is provided and enacted, That it
Merchants shall not be lawful to any person dwelling in any city
in towns or town corporate, using or exercising any of the mys-
corporate. teries or crafts of a merchant trafficking by traffic or
 trade into any the parts beyond the sea, mercer, draper, goldsmith,
 ironmonger, embroiderer or clothier, that doth or shall put cloth to
 making and sale, to take any apprentice or servant to be instructed
 or taught in any of the arts, occupations, crafts or mysteries which
 they or any of them do use or exercise; except such servant or ap-
 prentice be his son, or else that the father and mother of such ap-
 prentice or servant shall have, at the time of taking such apprentice
 or servant, lands, tenements or other hereditaments, of the clear
 yearly value of forty shillings of one estate of inheritance or freehold
 at the least, to be certified under the hands and seals of three jus-
 tices of the peace of the shire or shires where the said lands, tene-
 ments or other hereditaments do or shall lie, to the mayor, bailiff
 or other head officers of such city or town corporate, and to be
 enrolled among the records there.

6. By s. 28. every person being an housholder, and
Persons four and twenty years old at the least, and not oc-
dwelling in cupying husbandry, nor being a labourer dwelling or
towns not inhabiting, or that shall hereafter dwell or inhabit in any
corporate. town not being incorporate, that now is, or hereafter
 shall be a market-town, so long as the same shall be weekly used and
 kept as a market-town, and using or exercising any art, mystery or

manual occupation during the time of his abode there, and so using or exercising such art, mystery or occupation as aforesaid, to have in like manner to apprentice or apprentices, the child or children of any other artificer or artificers not occupying husbandry, nor being a labourer, which now do or hereafter shall inhabit or dwell in the same, or in any other such market-town within the same shire, to serve as apprentice or apprentices as is aforesaid, to any such art, mystery or manual occupation, as hath been usually exercised in any such market-town where such apprentice shall be bound in manner and form abovesaid.

Merchants, &c. dwelling in market-towns not corporate. 7. Provided by s. 29. That it shall not be lawful for any person, dwelling or inhabiting in any such market-town, using or exercising the feat, mystery or art of a merchant, trafficking or trading into parts beyond the seas, mercer, draper, goldsmith, ironmonger, imbroiderer or clothier, that doth or shall put cloth to making and sale, to take any apprentice, or in any wise to teach or instruct any person in the arts, sciences or mysteries last before recited, except such servant or apprentice shall be his son, or else that the father or mother of such apprentice shall have lands, tenements or other hereditaments, at the time of taking such apprentice, of the clear yearly value of three pounds, of one estate of inheritance or freehold at the least, to be certified under the hands and seals of three justices of the peace, of the shire or shires where the said lands, &c. do or shall lie, to the head officers or head officer of such market-town where such apprentice or servant shall be taken, there to be enrolled by such head officers always to remain of record.

What artificers may take apprentices where parents have no land. 8. By s. 30. any person using or exercising the art or occupation of a smith, wheelwright, ploughwright, millwright, carpenter, rough mason, plaisterer, sawyer, limeburner, brickmaker, bricklayer, tyler, slater, helier, tylemaker, linen-weaver, turner, cooper, miller, earthen-potter, woollen-weaver, weaving huswives or household cloth only, and none other cloth, fuller, otherwise called tucker or walker, burner of ore and wood-ashes, thatcher or shingler, wheresoever he or they shall dwell or inhabit, to have or receive the son of any person as apprentice in manner and form aforesaid, to be taught and instructed in these occupations only and in none other, albeit the father or mother of any such apprentice have not any lands, tenements or hereditaments.

*Keeping
journeymen.*

9. By *s. 33.* all and every person that shall have three apprentices in any of the crafts, mysteries or occupations of a clothmaker, fuller, shearman, weaver, taylor or shoemaker, shall retain and keep one journeyman, and for every other apprentice above the number of the said three apprentices one other journeyman, upon pain for every default therein, ten pounds.

*Provision
for worsted
makers in
Norwich and
Norfolk.*

10. Provided by *s. 34.* that this act shall not extend to prejudice any liberties granted to the company of worsted-makers and worsted-weavers within the city of *Norwich* and elsewhere within the county of *Norfolk*, which be in force at the beginning of the parliament by which this act was passed.

11. By *s. 41.* all indentures, &c. made contrary to the provisions of this act are declared void, and the persons so taking apprentices liable to a penalty of 10*l.*

But now by *54 Geo. 3. c. 96. s. 2.* reciting that whereas by the *5 Eliz. c. 4.* divers rules and regulations were enacted respecting the qualifications of persons entitled to take and become apprentices, and the term of years for which such apprentices should be bound and as to the mode of binding such apprentices, and then reciting *s. 41.* of the said act by which all indentures, &c. not made according to such rules and regulations were declared to be void, and the master so taking, &c. liable to a penalty of 10*l.* it is enacted, That so much of the said recited act be repealed, and that any person may take, or retain, or become an apprentice, though not according to the provisions of the said act, and that indentures, &c. entered into for that purpose which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said act as is herein last recited notwithstanding.

12. Provided by *s. 4.* that this act shall not extend to defeat, alter or prejudice the custom, &c. of the city of *London* concerning apprentices, or the ancient custom, &c. of any city, town, corporation or company lawfully constituted, or any bye-law or regulation of any corporation or company.

13. By *13 & 14 Car. 2.* weavers of stuffs in *Norfolk* and *Norwich* who shall employ two apprentices shall employ two journeymen, and no master shall have more than two apprentices or any week-boy to weave in the said trade under a penalty of *5*l.** a month to the king.

14. By *17 Geo. 3. c. 55.* repealing *1 Jac. 1. c. 17.* every hat-maker

shall employ one journeyman for each apprentice, provided a sufficient number of journeymen who have served apprenticeships in the trade, offer themselves for employment.

15. A bye-law made by a company in a corporation to restrain the number of apprentices to be taken by any of its members, is a bye-law in restraint of trade, and void. *Res v. Coopers' Comp. of Newcastle*, 7 T. R. 563. i. 591.

II. Who are compellable to serve.

16. By 5 Eliz. c. 4. s. 35. if any person shall be required by any housholder, having and using half a plough-land at the least in tillage, to be an apprentice, and to serve in husbandry, or in any other kind of art, mystery or science before expressed, and shall refuse so to do, that then upon the complaint of such housekeeper made to one justice of the peace of the county wherein the said refusal is or shall be made, or of such housholder inhabiting in any city, town corporate or market-town, to the mayor, bailiff or head officer of the said city, town corporate or market-town, if any such refusal shall there be, they shall have full power and authority by virtue hereof, to send for the same person so refusing; and if the said justice, or the said mayor or head officer shall think the said person meet and convenient to serve as an apprentice in that art, labour, science or mystery, wherein he shall be so then required to serve, that then the said justice, or the said mayor or head officer, shall have power and authority by virtue hereof, if the said person refuse to be bound as an apprentice, to commit him unto ward, there to remain until he be contented, and will be bounden to serve as an apprentice should serve, according to the true intent and meaning of this present act.

17. But by s. 36. no person shall by force or colour of this estate, be bounden to enter into any apprenticeship other than such as be under the age of twenty-one years.

18. By s. 43. every such person shall be bounden to serve for the years in their indentures contained, as amply as if the same apprentice were of full age at the time of the making of such indentures.

19. Where an apprentice was bound at the age of seventeen years by indenture (stating her to be fourteen) for seven years, the court held that she was entitled to be discharged at twenty-one:—
“Every indenture of an infant is voidable at his election; in such cases the master must trust to the covenant of those who engage

an infant. Where the binding is by the authority of an act of parliament, that takes away the power of electing to vacate the inheritance; but I know of no act which prohibits the party in a case like the present from making her election upon her coming of age. It ought not to have been bound longer than until she was twenty." *Per Lord Kenyon, Ch. J. Ex parte Davis, 7 T. R. 715.*

Quære, whether, by the custom of London, apprentices by indenture to serve beyond the period of full age be not obliged to serve the full term? See *Moore, 135. Bohun's Lond. 1 Mod. 271.*

In the case of a *habeas corpus* for the discharge of an apprentice above the age of twenty-one, the return stated the custom of the city that every citizen and freeman of the city might take apprentice any person above the age of fourteen and under twenty-one to serve for seven years and more, but did not state that the apprentice was within those ages when he bound himself apprentice, and the court held that this ought to have been distinctly alleged, and they would not intend it from matter dehors to the return. Leave to amend the return also was refused, and it was refused altogether. *Ex parte Eden, 2 M. & S. 226.*

Of the Indentures; their Form, Revocation, and Dissolution.

22. The retainer and taking of an apprentice shall be made and done by indentures. 5 *Edw. c. 4. s. 25. Stat. in br. 546.*

It is not sufficient that it be by deed-poll, although the style of the instrument run "this indenture witnesseth." *Smith v. Birch,*

An agreement to execute indentures is not a sufficient binding an apprentice, although service be actually performed. *Rex v. St. John, i. 530.*

Nor will any agreement whatever constitute an apprenticeship unless there be an indenture. *Rex v. Whitechurch Canonico-regular, 532.*

Of course not a binding by parol. *Rex v. Mawman, i. 531.* By 31 *Geo. 2. c. 11. s. 1.* it is enacted, That no person who has been bound an apprentice, by any deed, writing or contract indented, being first legally stamped, shall be liable to be bound from the town, parish or place where he or she shall have been bound an apprentice, and resident forty days, by virtue of

any order of removal, granted by two justices of the peace of any county, riding, division, city, borough, town corporate or place; or by virtue of any order of the justices at their general or quarter-sessions, by reason or on account of such deed, writing or contract, not being indented only.

28. But the binding must still be by deed. *Rex v. Ditchingham* 4 T. R. 769. ii. 377.

29. The indentures must retain the person bound as an apprentice, for unless he be retained as an apprentice he is only an articulated servant. *Bac. Abr.* 546. i. 526.

30. And where the agreement was that the master should teach a trade, the party so taught finding himself in necessities, and giving up to the master half his earnings, which the master said was the condition upon which he taught the trade, the court held that this was not a contract of apprenticeship, the person not being spoken of as an apprentice. *Rex v. Little Bolton, Cald.* 367. ii. 222.

31. And where a master sent his foot-boy to a barber to learn to dress hair and shave, for which the master gave the barber a fee of five pounds, and entered into an agreement that the boy should stay with him a certain time, the court held that this was not an apprenticeship, for there was no covenant on the part of the boy to serve the barber as an apprentice. *Chesterfield's Case, Salk.* 479. i. 527.

32. But in a subsequent case the court held that a contract of apprenticeship may be formed without making use of the word "apprentice"—since whether it be an apprenticeship or a hiring and service depends upon the intention of the parties which is to be collected from the whole of the agreement. ~~*Rex v. Highnam*, ii. 571.~~

~~33. See also~~ *Rex v. Laindon*, 8 T. R. 379. ii. 378. upon which latter occasion it was said that *Rex v. Little Bolton* was an anomalous case.

34. And upon another occasion Lord Kenyon, Ch. J. said, that it was enough to form an apprenticeship if the purpose of the contract were that the one party should learn and the other teach a trade; that no technical words were necessary to constitute the relation of master and apprentice, and that it was not necessary that any premium should be given to the master. See *Rex v. Rainham*, 1 E. R. 531.—*post.* title *Settlement by Apprenticeship*.

35. But although an infant may voluntarily bind himself apprentice, and, if he continue apprentice for seven years, may have the

freedom to exercise his trade, yet neither at common law, nor under the 5 *Eliz. c. 4.* can he be sued upon the covenant of his indenture. *Gilbert v. Fletcher, Cro. Car. 179. i. 527.*

36. And every indenture of an infant, except of a parish apprentice, is voidable at his election on attaining to maturity. *Ex parte M. Davies, 7 T. R. 715. i. 535.*

37. It is therefore usual for the father, or some other friend of the apprentice, to become bound with him for performance of the covenants of the indentures; and where the father and son on the one part, and the master on the other, mutually covenant and agree, &c. an action will lie against both father and son, although the breach be committed by the son only. *Whitly v. Loftus, 8 Mod. 190. i. 528.*

38. For, *per Lord Mansfield*, nothing is clearer than that the father is, in such case, bound for the performance of the covenant by the son. *Branch v. Ewington, Doug. 518. ii. 535.*

39. And where a father had covenanted for the service of his son, as an apprentice for seven years, it was held to be no defence to an action against him on the covenant that the son faithfully served until he came of age, and then avoided the indenture. *Cuming v. Hill, 3 B. & A. 59.*

40. The circumstance of the counterpart of indentures not being executed by the master, shall not prevent the person bound from deriving the effect of an apprenticeship under them. *Rex v. St. Peter's, ii. 367.*

41. For the binding of *parish apprentices* was authorized by 43 *Eliz. c. 2. s. 5.* long before the statute 8 & 9 *Will. 3. c. 30. s. 5.* which requires a counterpart. *Rex v. Fleet, Cald. ii. 371.*

42. And a parish apprenticeship is good although the apprentice do not sign the deed. *Rex v. St. Nicholas, 2 T. R. 726.*

43. Not so, however, in the case of other apprentices, for the indenture is invalid unless it be executed by the apprentice himself. Thus, where the instrument was executed by the master and father of the apprentice only, the court held that it was incomplete, and they said that the father had, at common law, no authority to bind his infant child apprentice without his assent, and they would not imply such assent merely from a service according to the terms of the supposed indenture. *Rex v. Arnesley, 3 B. & A. 584. Rex v. Cromford, 8 E. R. 25.*

44. Nor does it make any difference that the person intended to

be bound is an adult; the indenture must be signed by such person in order to constitute an apprenticeship. *Rex v. Ripon*, 9 *E. R.* 225.

45. A binding to a master under the age of twenty-one years is good. *Rex v. St. Petrox*, 4 *T. R.* 196. ii. 377.

2. *Revocation and Dissolution.* 46. Indentures of apprenticeship made under the 5 *Eliz. c. 4.* may be revoked by the mutual consent of those who are parties thereto; and if an apprentice leave his service with his master's consent, the master cannot, in an action of covenant, say that he revoked such consent. *Barber v. Dennis*, 2 *Salk.* 479. ii. 527.

47. But although the parties cannot take advantage of their own act, yet an agreement to cancel indentures shall not affect third persons; and therefore, where a master gave up indentures to his son, who was his apprentice, and the apprentice, before they were actually cancelled, became chargeable to the parish, it was held that, with respect to the parish, the apprenticeship continued. *Rex v. Thursby*, 6 *Mod.* 69. i. 527.

48. So, where a parish apprentice was bound till he should attain the age of twenty-four years, and by a formal agreement between his master and himself he was discharged from his apprenticeship and the indentures delivered up, it was held, that the apprenticeship was not determined, because the apprentice being under age, he could not consent to dissolve the contract. *Rex v. Austrey*, i. 607. (See *infra*.)

49. But where a person was bound for seven years, and served five, and then left his master's service, and the indentures were afterwards exchanged between the apprentice's father and the master, with the apprentice's consent, it was held, that the exchanging of the indentures amounted to a cancelling of them, and of course to a determination of the apprenticeship. *Rex v. St. Mary Kalendar*, i. 531.

50. So where a boy eight years and a half old bound himself for seven years by indenture with his father's consent, who was a party thereto, and after a service of a year and a half the indenture was destroyed by consent of the master, the father, and the apprentice, the court held that the apprenticeship was dissolved, and the boy at liberty to bind himself apprentice to another master. *Rex v. Weddington*, i. 532.

51. So also where a person was bound for seven years, and, when he had attained the age of twenty-one, gave his master a guinea to

discharge him from his apprenticeship, and the master gave him a discharge under his hand, the court were of opinion, that if the indenture had not been destroyed, but had remained uncanceled in the master's hands, yet, after this agreement with his apprentice, then at full age, he could not have used the indenture against the apprentice. *Rex v. Justices of Devonshire, Cald. 32. i. 534.*

52. But if the indentures of an infant apprentice remain uncanceled, the consent of the master that the apprentice shall serve another person will not dissolve the apprenticeship. *Rex v. St. Mary Lambeth, ii. 419.*

53. Nor is the bankruptcy of the master a cancelling of the indentures. *Rex v. Buckingham, Ld. Raym. 1352. i. 529.*

54. Nor if an apprentice leave his master's service, and enter the king's service, with his master's approbation, does this cancel the indentures. *Rex v. Hindringham, 6 T. R. 557. i. 536.*

55. Where an infant bound himself apprentice for five years, and eloped from his master's service and went to sea for a year, during which time he came of age, and afterwards returned into his master's service, the court said, that, even supposing the indentures voidable, the mere act of his quitting his master's service was not an avoidance of them. *Ashcroft v. Bertles, 6 T. R. 652. ii. 403.*

56. So, where an apprentice agreed verbally with his master to give him 7*l.* for the remainder of his time, the master to keep the indentures till the money was paid, it was held that the indentures continued until the condition was performed. *Rex v. Chipping Warden, 8 T. R. 108. ii. 404.*

57. Where the mother of an apprentice, whose time had not expired, applied to his master to give him up to her, and the master having consented to it, and all having agreed to part, the apprentice went away, but the indenture, which was in the hands of a third person, was never applied for nor given up; the court held that this agreement between the parties was not sufficient to put an end to the apprenticeship, although the master said that he would have given up the indenture had it been in his possession at the time, and afterwards refused to take back the apprentice. *Rex v. Skeffington, 3 B. & A. 382.*

58. By 5 *Eliz. c. 4. s. 41.* all indentures, covenants, &c. for having, taking or keeping an apprentice otherwise than by that statute ordained and appointed, are declared to be void in law; and every person who may thereafter take or newly retain any apprentice contrary to the tenor and true meaning of that act, shall forfeit 10*l.*

59. But it was held that this clause was to be construed as rendering indentures made for a less period than seven years *voidable* only at the election of the parties, and not *void*. *Rex v. St. Nicholas, Ipswich. Burr. S. C. 91. i. 330. Gray v. Cookson and Another, 16 E. R. 13. & dict. per Mansfield, Ch. J. Gye v. Felton, 4 Taunt. 876.*

60. And that such an indenture was voidable *only* by the parties, and therefore a settlement might be gained under it. See cases of *Rex v. St. Nicholas*, and *Rex v. St. Petros*, under title *Settlement by Apprenticeship, post*.

61. Upon this principle of such an indenture being *voidable* only it was held, to form no defence to an action on a promissory note, that it was given as part of the consideration of an indenture of apprenticeship for less than seven years by being antedated. Nor did the consideration for the note fail, because the apprentice was discharged by a magistrate after two years, on account of the master having enticed him to commit felony, particularly when the apprentice fee was to be paid in the first instance, although in case of the defendant a note was taken for part of it, payable at a future day. *Grant v. Welchman, 16 E. R. 207.*

62. Such indenture cannot be avoided by the mere act of an apprentice absenting himself from his master's service, which is an offence under 20 Geo. 2. c. 19. *Gray v. Cookson and Another, 16 E. R. 13. Rex v. Evered, i. 534.*

63. But now by 54 Geo. 3. c. 96. s. 2. (which see *ante* Art. 11. of this title) the 41st sect. of 5 Eliz. c. 4. is repealed.

64. For discharge from the indentures. See Div. VI. of this title.

IV. Of the Stamp Duty.

65. By 8 Ann. c. 9. s. 32. the sum of 6d. for every 20s. of every sum of 50l. or under; and 1s. for every 20s. of every sum amounting to more than 50l. which shall be given, paid, contracted or agreed for, with or in relation to every clerk, apprentice or servant, which shall in the kingdom of *Great Britain* be put or placed to or with any master or mistress to learn any profession, trade or employment, and proportionally for greater or lesser sums, shall be paid by the said masters or mistresses respectively.

66. By s. 35. the full sum or sums of money received, or in any wise directly or indirectly given, paid, agreed, or contracted for, with or in relation to every such clerk, apprentice, and servant as aforesaid, shall be truly inserted and written in words at length, in the indenture or other writing which shall contain the covenants,

articles, contracts or agreements, relating to the service of such clerk, apprentice or servant as aforesaid, and shall bear date upon the day of the signing, sealing or other execution of the same; upon pain, that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured or contracted for, or in respect of any such clerk, apprentice or servant as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture or other writing, shall for every such offence, forfeit double the sum so given, paid, secured or contracted for; one moiety to her Majesty, and the other, with full costs, to any informer, within one year after the time limited or appointed for the service shall be expired.

67. By s. 36. the commissioners of stamps shall provide two stamps over and besides the stamps requisite in respect of such indenture or writing, the one of which shall denote the duty of 6d. and the other the duty of 1s.; and all such indentures, or other writings, signed in *London* or *Westminster*, or within the bills of mortality, shall be brought to the stamp-office, and the duties paid to the receiver-general; and upon such payment be stamped with one of the said stamps, as the case shall require, within one month after the respective dates thereof.

68. By s. 37. the said indentures and other writings, entered into, executed or signed in *Great Britain*, (not being within the weekly bills of mortality), shall (at the option of the party concerned,) be brought or sent, either to the head-office within the limits of the said bills, or else to some of the collectors of stamp duties who shall reside without the limits of the said weekly bills, in *England*, *Wales*, or the town of *Berwick upon Tweed*, or to some of the officers to be appointed for the duties by this act granted in *Scotland*, within two months after the date, execution, or signing thereof respectively; and the duties paid, either to the said receiver-general at the head-office, or to such collector: and if to the receiver-general in the said head-office, then the indenture or writing shall be forthwith stamped with one of the said stamps, as the case shall require; and if to a collector, or other officer, without the limits of the said weekly bills, the same collector or other officer, shall indorse on such indenture, or other writing, a receipt for the monies so paid, in words at length, bearing date the day on which such payment shall be made, and to subscribe his name thereto, to the intent that he may thereby be charged with every sum so paid to him, and

forthwith deliver back the said indenture or writing so indorsed to the bringer thereof.

69. By s. 38. every such indenture or writing, so endorsed (in case the same be entered into, executed or signed within fifty miles from the bills of mortality) shall, within three months after the date or making thereof, and if the same be entered into, executed, or signed in any part of *Great Britain* at a greater distance, within six months after the date or making thereof, be brought or sent to the said head-office, where the same (being produced with the said receipt indorsed) shall be immediately stamped, as the case shall require.

70. By s. 39. all such indentures or writings, wherein shall not be truly inserted the full sum and sums of money received, or in any wise directly or indirectly given, paid, secured or contracted for, with or in relation to such clerk, apprentice or servant, or whereupon the duties payable by this act shall not be duly paid, or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, within the respective times limited, shall be void, and not available in any court or place, or to any purpose whatsoever; and the clerk, apprentice or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation or company, and of following or exercising the intended profession, trade or employment; any charter, law or custom, to the contrary notwithstanding.

71. But an indenture of apprenticeship was held not to be void by 8 Ann. c. 9. although it were originally agreed between the master and apprentice's father, that a premium of 20*l.* should be paid, and the master afterwards to reduce the amount of the duty, agreed to take 19*l.* 19*s.* 6*d.* which was the sum inserted in the indenture, and actually paid. *Shepherd v. Hall*, 3 Camp. N. P. C. 180.

72. By s. 40. Provided that nothing in this act shall extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant who shall be put or placed out at the common or public charge of any parish or township, or by or out of any public charity, or to require the stamping with any such new stamp as aforesaid, of any indenture, articles, covenant, agreement or contract relating to such apprentice or servant as last mentioned.

73. The premium given by the parish officers upon binding out a poor apprentice, needs not be set out in the indenture in words at length, such an indenture being exempted by the last cited clause, and the insertion of the premium being required for no other purpose than to ascertain the amount of the duty. *Rea v. Oadby*, 1 B. & A. 477. *supp.* 211.

74. By 8 Ann. c. 9. s. 45. no indenture or writing required by this act to be stamped, as aforesaid, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party, on whose behalf the same shall be given or admitted in evidence, do first make oath, that to the best of his or her knowledge, the sum or sums therein for that purpose inserted or mentioned was or were really and truly all that was directly or indirectly given, paid, secured or contracted for, on behalf or in respect of such clerk, apprentice or servant, to or for the benefit of the master or mistress to or with whom such clerk, apprentice or servant, was put or placed.

75. And by s. 45. where any thing or things, not being lawful money of Great Britain, shall directly or indirectly be given, assigned, conveyed, delivered, contracted for or secured, to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice or servant, for whom a duty is chargeable by this act; the duties shall be answered and paid, for the full value or values of such thing or things, and the same duties for the said values shall be secured and answered in the same manner and form, and under the like pains, penalties, forfeitures and incapacities as are before in this act provided for securing the said rates upon monies given or paid, or agreed to be given or paid, with such clerks, apprentices or servants as aforesaid.

76. If a person agree to go apprentice to another, and enter upon the service accordingly, and after a trial of three months is bound apprentice by indenture, but the indentures are dated at the time they entered on the service, and not at the time of the execution, the indentures are absolutely void to all intents and purposes by 8 Ann. c. 9. s. 35. *Cuerden v. Leland*, i. 545.

77. So also where a mother bound her son apprentice, and paid twenty shillings to the master, which sum was recited in the indenture, pursuant to 8 Ann. c. 9. s. 45. but the sixpence duty was never paid, nor the indentures stamped with the additional stamp, they were held void *ab initio*. *Ibid.*

78. So also, if, on production of the indentures, they are not

stamped. *Rex v. Llanwairclyd*, i. 549. *Rex v. Edgeworth*, ii. 42. *Rex v. Ditchingham*, ii. 377.

79. So an agreement of apprenticeship entered into with a view to save the expences of indentures, and to avoid the payment of the duties imposed by 8 *Ann. c. 9. s. 32.* is void, and of no effect. *Rex v. Highnam*, i. 553.

80. But in cases where the indenture is not produced, and evidence is given that indentures actually existed, and were duly executed, the court will presume that they were regularly stamped and the duty paid. *Rex v. East Knoyle*, i. 547. *Rex v. Badby*, i. 549.

81. The additional stamp is only required where the money or other thing is given, paid, contracted, or agreed for, with or in relation to the apprentice for the benefit of the master; and therefore where the mother of a lad proposed to put him out an apprentice, but the intended master refused to take him because he wanted clothes; and the grandfather agreed to give the master 30s. which the master was to, and did lay out for the boy in clothes, the court held, that no such stamp was necessary on this account; for the statute means money given for the benefit of the master, and in this case he laid out the money merely as an *agent* to the boy's friends. *Rex v. Northowram, Str.* 1132. i. 548.

82. And where no consideration money is given, the indentures do not require a stamp. *Rex v. St. Peter's, Chester*, i. 548.

83. Money given by the parish officer (in the case of a voluntary binding) as the consideration of taking an apprentice is not liable to the duty imposed by the 8 *Ann. c. 9. s. 35.*, for it comes within the exception to it in *sect. 40.* as being at the public charge of the parish; neither is any duty payable for any consideration, unless it be given to the master or mistress of the apprentice. *Rex v. St. Petros, Dartmouth, 4 T. R.* 196. i. 554.

84. So where in an indenture 6*d.* was the sum mentioned to have been given to the master as a fee with the apprentice, the court resolved, that the statute intended, that when more than fifty pounds were paid, a twentieth part thereof should be paid for duty, and a fortieth part when the sum was under fifty pounds; but that in the present case there would not, under this mode of calculation, be any coin small enough to pay the duty in, and *de minimis non curat lex.* *Baxter v. Faulam, 1 Wils.* 129. i. 549.

85. So also where in indentures of apprenticeship, there was a co-

venant, that the father would provide the apprentice in meat, drink, washing, lodging and clothes, and that the master should pay the apprentice five pounds a-year in consideration of his faithful services, and of the due performance of the covenants, the court seemed to think, that the indentures did require a stamp under 8 Ann. c. 9. s. 41. because the judge could not enter into a discussion whether the five pounds *per annum* paid by the master were equivalent for the necessaries provided by the father of the apprentice, *Pennington v. Sudall*, i. 551. *notis.*

86. But this point was afterwards more solemnly decided. Thus where it was agreed in the indentures, that "sufficient meat, drink, apparel of all kinds, physic, surgery, and lodging, and all other necessaries, during the said term, should be found and provided for the said apprentice by the said father, and for which purpose the master was to allow him 4s. a-week during the said term;" the court held the indentures good, although they were not stamped and no duty paid, the court said that the 4s. *per week* might be an equivalent for the necessaries provided by the father, and at all events they would not presume that it was not so, in the absence of any proof to that effect. *Rex v. Portsea*, i. 551.

87. So also where in an indenture the apprentice covenanted that he would, "at his own expence, provide for himself meat, drink, washing, lodging, apparel, and physic, at all times during the term, and the master covenanted to pay him five shillings a-week for the first three years, and seven shillings a-week for the remainder of the term," the indenture was held not to require the additional stamps imposed by 8 Ann. c. 9. s. 45. *Rex v. Walton Dale*, 3 T. R. 515. i. 553.

88. And where an indenture was, that the father of the apprentice would, at his own charge, find and provide for his son good, competent, and sufficient meat, drink and lodging on every *Sunday* in the year during the said term, and would provide him with clothes and apparel of all sorts (except working-aprons and shoes), and the master covenanted to provide him with meat, drink and lodging, except on *Sundays*, during the term, the court thought the point so clearly settled, that they would not suffer it to be argued.

"I think that the clear meaning of the statute of *Anne* is, that where money, or money's worth, is given to the master by the friends of the apprentice by way of premium, a duty ought to be paid for it; but that where meat, clothes, &c. are to be provided

by the master, no duty is payable, because there is not any thing given to the master." *Per Lord Kenyon*, Ch. J.

And *Buller*, J. said, that what is given for the benefit of the master must be paid for, but what is given for the benefit of the apprentice is not within the words of the act of parliament. *Rex v. Leighton*, 4 T. R. 732. i. 556.

69. A master stipulating for fourpence out of every shilling of the earnings of his apprentice is no benefit to him within the meaning of the statutes 8 Ann. c. 9. and 9 Ann. c. 21. for which an additional duty is to be paid; for a master is by law entitled to the whole of what his apprentice earns. *Rex v. Wantage*, 1 E. R. 601. i. 559.

90. Where a sum agreed to be given with an apprentice was £1 5s. which was inserted in the indenture, and the duty paid accordingly, it was held sufficient within 8 Ann. c. 9. though in fact only 4l. 4s. were paid; for "the full sum received, given, paid, agreed or contracted for," as required by the act, was inserted and the duty paid for it, and the stamp used was of the same description, and the duty appropriated to the same fund as if only 4l. 4s. had been inserted and paid for, supposing that would have sufficed. *Rex v. Keynham*, 5 E. R. 309. i. 560. See *Rex v. Bradford*, post. Art. 101.

91. By 9 Ann. c. 21. s. 66. if any master or mistress neglect to pay the duties within the time limited, he or she shall forfeit 50l. one moiety to the king, and the other moiety, with full costs of suit to such person as shall sue for it.

92. By the 18 Geo. 2. c. 22. in case of neglect to pay any such duty on the part of the master, he shall in addition to the 50l. forfeit the double duty.

93. By 20 Geo. 2. c. 45. s. 5. if any master or mistress, who by reason of such neglect as aforesaid, shall become liable to forfeit and pay the said double duties shall pay the said double duties, and also tender the indentures or contracts to be stamped at any time within two years after the end or determination of the apprenticeship or service of any such clerk, apprentice or servant respectively, and before any suit or prosecution shall have been commenced for recovering any of the said penalties, the indentures or contracts of such clerk, apprentice or servant respectively, shall be good and available in law and equity, and may

If double duties paid, and the indenture stamped within two years, &c. shall be valid and master discharged.

e given in evidence in any court whatsoever ; and the clerks, apprentices or servants therein named, shall be capable of following their respective trades or employments, as fully as if the rates and duties so omitted had been duly paid ; and all and every person and persons, who shall have incurred any penalties by the omissions aforesaid, upon payment of such double duties within the times herein last-before limited, shall be discharged from the said penalties, &c. any thing in the said former acts, or any of them, contained to the contrary notwithstanding.

*Recovery of
penalty by
apprentices.*

94. By s. 6. if any master or mistress shall, by reason of any such neglect as aforesaid, become liable to pay such double duties, and any such clerk, apprentice, or servant respectively, shall at any time after such forfeiture incurred, either in the presence of one witness, or by writing under the hand of such clerk, apprentice or servant respectively, signed in the presence of one witness, require his or her master or mistress to pay the said double duties, and such master or mistress shall not, within three months after such request, pay the same ; and any such clerk, apprentice or servant shall, at any time within two years after the determination of his clerkship, apprenticeship or servitude, pay the said double duties so forfeited, and not paid by his or her master or mistress, such clerk, apprentice or servant, within three months after such payment of the said double duties, by him, her or them as aforesaid, may demand of his or her master or mistress, or his, her or their executors or administrators, double the sum or sums of money, or other consideration respectively given, paid and agreed or contracted to be paid to such master or mistress, for or in respect of such clerkship, apprenticeship or servitude ; and in case such sum or sums of money shall not be paid within three months after such demand thereof made, such clerk, apprentice or servant, may sue for and recover the same, with full costs of suit, and immediately after payment thereof, and upon signifying by writing under his or her hand, that he or she desires to be discharged from his, her or their clerkship, apprenticeship and service respectively, shall be accordingly discharged from the same respectively, and from all actions, penalties, forfeitures and damages, for not serving the time for which he, she or they were respectively bound, contracted for, or agreed to serve such master or mistress respectively.

95. By s. 7. every such clerk, apprentice or servant, shall have the same benefit and advantage of the time he or she shall respec-

tively have served such master or mistress respectively, as he or she could or might have done, in case of any assignment or turning over to any new or other master or mistress.

96. By s. 8. Provided always, that in case where any prosecution shall be commenced against any master or mistress, for recovering any of the penalties and forfeitures inflicted and incurred by the said former acts, or any of them, the clerk, apprentice or servant of such master or mistress respectively, shall pay such double rates and duties, at any time within two years after the end of his, her or their clerkship, apprenticeship or servitude, every such clerk, apprentice or servant respectively shall, upon payment of such double rates and duties as aforesaid, be capable and qualified to follow his, her and their respective trades and employments; and the indentures or contracts of such clerk, apprentice and servant respectively, shall be good and available in law and equity, and may be given in evidence in any court whatsoever; any thing in this or the said former acts, or any of them, contained to the contrary notwithstanding.

97. By 5 Geo. 3. c. 46. s. 18. reciting the statute 9 Ann. c. 9. for laying certain rates upon monies to be given with clerks and apprentices, it is enacted, That every chamberlain and other proper officer of every city and corporate town and company within the kingdom of *Great Britain*, where any clerk or apprentice, or servant, obtains his freedom by servitude, shall fairly write and enter in some book or books to be kept for that purpose, the names of all such clerks, apprentices and servants, as shall be put or placed out within the jurisdiction of such city or town corporate; and also the names and places of abode of the masters or mistresses; and the sums of money given, paid, contracted or agreed for, with or in relation to such clerks, apprentices or servants; and the profession, trade or employment which they are respectively to learn; and the dates of the indentures, covenants, articles or contracts, by which such clerks, apprentices or servants, are respectively put and placed out; and if any chamberlain or other proper officer shall neglect or refuse to make any such entry in manner as above set forth, he shall, for every such offence, forfeit the sum of twenty pounds.

98. By s. 19. all printed indentures, covenants, articles or contracts for binding clerks or apprentices in *Great Britain*, shall have the following notice or memorandum printed under the same: viz. "The indenture, covenant, article or contract, must bear date the day it is executed; and what money or other thing is given or con-

tracted for with the clerk or apprentice, must be inserted in words at length, and the duty paid to the stamp-office, if in *London*, or within the weekly bills of mortality, within one month after the execution; and if in the country, and out of the said bills of mortality, within two months, to a distributor of the stamps, or his substitute; otherwise the indentures will be void, the master or mistress forfeit fifty pounds, and another penalty, and the apprentice be disabled to follow his trade, or be made free;" and if any printer, stationer, or other person or persons shall sell, or cause to be sold, any such indenture, covenant, article or contract, without such notice or memorandum being printed under the same, then, and in every such case, such printer, stationer, or other person or persons shall, for every such offence, forfeit the sum of 10*l*.

99. By *s. 41*. And all penalties and forfeitures inflicted, by this act, not being before otherwise disposed of, shall be paid, the one moiety thereof to his Majesty, and the other moiety thereof to the person who shall inform and sue for the same in any court of record, with his or their full costs of suit, by action of debt, bill, plaint or information.

100. By 42 *Geo. 3. c. 3.* for the relief of persons who, through neglect or inadvertency, have omitted to pay the duty upon money or other valuable consideration given, paid, contracted or agreed for, with or in relation to any clerk, apprentice or servant, placed with any person to learn any profession, trade or employment, to have the indenture or agreement stamped within the time limited, or who have omitted to insert in words at length in such indenture or writing, the full sum or other valuable consideration received or paid, it is enacted that, on payment of double the said duty on or before the 24th of *December 1802*, such indenture or other writing may be stamped, and the same shall be good and may be given in evidence in any court; and all such persons may exercise their respective trades as if the said duties had been fully paid; and every person who hath incurred any penalty by such neglect or omission, shall be acquitted, except where prosecutions are depending.

101. The 37 *Geo. 3. c. 111. s. 3.* expressly exempts from the operation of that act, as imposing an additional duty upon deeds, all indentures of apprenticeship, where the sum or value not exceeding ten pounds shall be given, or contracted with or in relation to the apprentice.

102. The 44 *Geo. 3. c. 98. Sched. A.* imposes upon any indenture of apprenticeship, where the sum or value given, paid, contracted

or agreed for, with or in relation to such apprentice, shall not exceed 10*l.* a stamp duty of 15*s.*

Exceeding	10 <i>l.</i> and not exceeding	30 <i>l.</i>	1 <i>l.</i> 10 <i>s.</i>
_____	20 <i>l.</i> _____	50 <i>l.</i>	2 <i>l.</i> 10 <i>s.</i>
_____	50 <i>l.</i> _____	100 <i>l.</i>	5 <i>l.</i> —
_____	100 <i>l.</i> _____	300 <i>l.</i>	12 <i>l.</i> —
_____	300 <i>l.</i> _____	_____	20 <i>l.</i> —

Indentures for binding poor parish children apprentices or other children by any public charity, are expressly exempted.

Assignment of indenture of apprenticeship (except such indentures as last mentioned,) 15*s.*

103. In a late case where an indenture had a covenant by the apprentice to allow his master 2*s.* a-week, and to have wages, and provide for himself during the term, it was objected that the stamp duty should have been 1*l.* 10*s.* instead of 15*s.* (which had been paid) under the last cited statute; but the court held that the indenture did not require the additional stamp duty required by the 44 *Geo.* 3. c. 98. upon an indenture where a sum of money is contracted for by the apprentice. "If the words of the covenant were transposed, they would run thus: the pauper to have wages and to allow his master 2*s.* per week, and then there would be no doubt of their meaning an allowance out of the wages simply, and what difference does the order in which they now stand, make to the sense? It, therefore, can never be considered as a boon to the master, who instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2*s.* per week out of them." *Per Lord Ellenborough, Ch. J. Rex v. Bradford, 1. M. & S. 151. supp. 8.*

104. By 55 *Geo.* 3. c. 184. certain stamp duties granted by 44 *Geo.* 3. c. 98. and all duties granted by 48 *Geo.* 3. c. 149. are repealed, and the following stamp duties are payable upon indentures of apprenticeship.

If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned or conveyed to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk or servant or both, the money and value of such other matter or thing shall not amount to 30*l.* - - 1*l.*

If the same shall amount to	30 <i>l.</i> and not to	50 <i>l.</i>	2 <i>l.</i>
_____	50 <i>l.</i> _____	100 <i>l.</i>	3 <i>l.</i>
_____	100 <i>l.</i> _____	200 <i>l.</i>	6 <i>l.</i>
_____	200 <i>l.</i> _____	300 <i>l.</i>	12 <i>l.</i>

If the same shall amount to	300 <i>l.</i> and not to	400 <i>l.</i>	20 <i>l.</i>
_____	400 <i>l.</i>	_____	500 <i>l.</i> 25 <i>l.</i>
_____	500 <i>l.</i>	_____	600 <i>l.</i> 30 <i>l.</i>
_____	600 <i>l.</i>	_____	800 <i>l.</i> 40 <i>l.</i>
_____	800 <i>l.</i>	_____	1000 <i>l.</i> 50 <i>l.</i>
_____	1000 <i>l.</i> or upwards		60 <i>l.</i>

And where there shall be no such consideration as aforesaid, moving to the master or mistress, if the indenture or other instrument shall not contain more than 1080 words, - 1*l.*

If the same shall contain more than that quantity, 1*l.* 15*s.*

105. The exemptions are of indentures or other instruments facing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, pursuant to the 32 Geo. 3. for the further regulation of parish apprentices.

V. Of the Apprentice Fee.

106. The Court of Chancery will order a master, who has put away his apprentice, to restore a proportion of the apprentice fee. *Thurman v. Abel*, 2 Vern. 64. i. 562.

107. But where an apprentice, after serving two years of his time, is sent away without any misconduct on the part of the master, enlisted as a soldier and afterwards was willing to return, but his master would not receive him, it was held that the master was not compellible to refund any part of the apprentice fee. Nor would the Court of Exchequer interfere by injunction to restrain the holder of a promissory note given for the amount from proceeding to recover it at law. *Cuff v. Brown and others*, 5 Price, 297.

108. Where a master received 250*l.* with his apprentice, and died within two years of the expiration of the term, the Chancellor decreed that, after debts and specialties paid, the executors should repay the 250*l.* as a debt due on simple contract, deducting 20*l.* per annum for the maintenance of the apprentice during the time he lived with his master. *Soam v. Bowden*, Finch, 396. i. 562.

109. With respect to the insolvency of the master, See post Div. I. Arts. 173, 174.

110. A bill will not lie in equity for the return of an apprentice's fee. *Hale v. Webb*, 2 Br. Ch. Ca. 78.

111. The justices at sessions, when they discharge an apprentice from his master, may, in their discretion, order a proportion of the apprentice fee to be returned. *Du Hamel's case*, Skin. 108. ii. 570.

VI. *Of the Jurisdiction of the Justices, and of the Master's Remedy in case of the Apprentice running or being inticed away, or stealing.*

I. COMPLAINT OF THE APPRENTICE.

112. By 5 *Eliz. c. 43. s. 35.* if any such master shall misuse or eviltreat his apprentice, or the said apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the said master or apprentice having cause to complain, shall repair unto one justice within the said county, or to the mayor or other head officer of the said city, town-corporate, market town, or other place where the said master dwelleth, who shall take such order between the said master and his apprentice, as the equity of the cause shall require; and if for want of good conformity in the said master the said justice, &c. cannot compound the matter, then the said justice, &c. shall take bond of the said master, to appear at the next sessions to be holden in the said county, or within the said city, &c. and upon his appearance and hearing of the matter before the said justices, &c. if it be thought meet unto them, to discharge the said apprentice of his apprenticeship, then the said justices, or four of them at the least, whereof one to be of the *quorum*; or the said mayor or other head officer, with the assent of three other of his brethren, or men of best reputation within the said city, &c. shall in writing under their hands and seals, declare, that they have discharged the said apprentice of his apprenticeship, and the cause thereof; and the said writing so being made, and enrolled by the clerk of the peace or town-clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors, and administrators; the indenture of the said apprenticeship, or any law or custom to the contrary notwithstanding.

113. By 20 *Geo. 2. c. 45. s. 3.* any two such (a) justices, upon any complaint by any apprentice put out by the parish, or any other apprentice, upon whose binding out no larger a sum than 5*l.* was paid, or concerning any misuse, refusal of necessary provision, cruelty, or other ill-treatment of such apprentice, by his or her master or mistress, may summon such master or mistress to appear before them, at a reasonable time to be named in such summons and may examine into the matter of such complaint; and upon proof thereof upon oath, (whether the master or mistress be present, or not, if service of the summons be also, upon oath, proved) may

(a) of the county, &c. where such master or mistress shall inhabit.

discharge such apprentice by warrant under their hands and seals for which warrant no fees shall be paid.

Justices may impose fines on masters for ill-usage of apprentices. 114. By 33 Geo. 3. c. 55. s. 1. any two justices assembled at any special or petty sessions of the peace, upon complaint made to them upon oath by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township or otherwise, provided that not more

than 10*l.* be paid upon the binding of such apprentice, against his or her master or mistress, of any ill-usage of such apprentice, by him or her, (such master or mistress having been duly summoned to appear and answer such complaint), may impose, upon conviction, any reasonable fine, not exceeding 40*s.* upon him or her; and by warrant under the hands and seals of any two of such justices at any such special or petty sessions as aforesaid, direct such fine, if not paid, to be levied by distress and sale of the goods and chattels of the person offending, rendering the overplus (if any) after deducting the amount of such fine, and the charges of such distress and sale, to such offender; and such fine, which may be imposed

How to be applied. upon any such master or mistress shall, at the discretion of the justices imposing the same, be either applied for the relief of the poor of the parish, &c.

where the offender shall reside, or be otherwise applied for the use of such apprentice, as a recompence for the injury by him or her sustained by reason of such ill-usage as aforesaid; and if any person shall be aggrieved by the imposition of such fine, or by

Appeal. any order or warrant of distress for levying the same, or by the judgment of the said justices, or by any act to be done in the execution of such warrant of distress, such person so aggrieved may appeal to the next general or quarter-sessions of the peace to be held for the county, &c. within which such person shall reside, of which appeal ten days notice, at the least, shall be given; and, for want of such distress, such person shall be committed to the house of correction for any space not exceeding ten days.

115. See with respect to parish apprentices, the *ss.* 11. and 12. of 32 Geo. 3. c. 57. *post.* under *Div.* VIII. of this title. Arts. 240, 241.

116. Non-payment of wages, or an insufficiency of meat and drink, or the beating of an apprentice by the wife of the master, are said to be good causes of departure. *Bro. Abr.* 27. 1 *Black.* 428. i. 568.

117. So is a neglect of the master to teach his apprentice the trade which he was bound to him to learn. *Rex v. Amies*, i. 574.

118. But a mere declaration by the master, that he will not take the apprentice again, is not a sufficient ground of discharge. *Rex v. Davis*, 1 Str. 704. i. 574.

119. And *using unkindly* is not such a *misusing* as is intended by the stat. *Rex v. Heaseman. Annelly's Rep.* 101. i. 575.

120. As to apprentice fee, see Art. 111.

II. Complaint of the Master.

121. By 5 *Eliz. c. 4. s. 35.* it is enacted, That if upon any complaint made to such justice, as is mentioned in that section, (which see *ante*, Art. 112., the default shall be found to be in the apprentice, the said justices, or the said mayor, &c. shall cause such due correction and punishment to be administered unto him, as by their wisdom and discretion shall be thought meet.

122. By *s. 47.* if any servant or apprentice of husbandry, or of any art, science, or occupation aforesaid, unlawfully depart or flee into any other shire, the said justices and the said mayors, and other head officers of cities and towns corporate, for the time being justices there, may grant writs of *capias*, so many as shall be needful, to be directed to the sheriffs of the counties, or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them; so that if they come by such process, that they be put in prison, till they shall find sufficient surety, well and honestly to serve their masters, or mistresses, from whom they so departed or fled, according to the order of the law.

123. By 20 *Geo. 2. c. 19. s. 4.* the justices may, upon complaint made, upon oath, by any master or mistress, against any such apprentice, concerning any ill behaviour, in his or her service (which oath such justices are hereby empowered to administer), examine and determine the same, and punish the offender by commitment to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging such apprentice, in manner and form before mentioned.

124. An apprentice apprehended under 5 *Eliz. c. 4.* or 20 *Geo. 2. c. 19.* cannot take advantage of a defect in the indentures, as where they were made for six years instead of seven, or where the apprentice was of age, and ran away for the purpose of avoiding the indentures. The court said, upon the latter occasion, that he could

not make use of his offence for the purpose of avoiding the punishment that attended it; but that, had he declared during the service his intention to depart, the case might have been different, that it was now, however, too late. *Rex v. Evered, Cald. 27. i. 576.*

125. Therefore where, upon a *habeas corpus* to bring up the body of an apprentice, the keeper of the house of correction returned, with the body of the party, a regular conviction of him by two magistrates, on the stat. 20 Geo. 2. c. 19. for a misdemeanour in absenting himself from the master's service, the court held it to be no answer to shew, by affidavit, that the party had bound himself, when an infant, to serve till twenty-five years of age, and that when he came of age, he wished to avoid the indentures, and had quitted his master's service, for this was proper matter to be shewn to the magistrates below, who, if the matter shewn to them were true, acted at their own peril in committing the apprentice. *Ex parte Gill, 7 E. R. 376. i. 718.*

126. A commitment in the disjunctive, "as an apprentice or servant for disobeying his indentures or articles," is bad. *Rex v. Evered, Cald. 27. i. 576.*

Apprentice absenting himself shall serve out his time afterwards. 127. By 6 Geo. 3. c. 25. s. 1. if any apprentice shall absent himself from his master's service, before the term of his apprenticeship shall be expired, every such apprentice shall, at any time thereafter, whenever he shall be found, be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service; and so, from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain, upon oath, to any justice of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal, for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, such justice may commit every such apprentice to the house of correction for any time not exceeding three months.

128. Provided, by *s. 2.* that nothing in this act contained shall extend to any apprentice, whose master shall have received with such apprentice the sum of ten pounds.

129. Provided also, by *s. 3.* that no apprentice shall be compelled to serve for any time or term, or to make any satisfaction to any master, after the expiration of seven years next after the end of the term for which such apprentice shall have contracted to serve; any thing herein contained to the contrary notwithstanding.

130. By the custom of London a master may justify turning away his apprentice for frequenting gaming-houses. *Woodroffe v. Farnham*, 2 *Vern.* 291. *i.* 570.

131. But marrying without the privity of the master affords no ground of discharge. *Stephenson v. Houlditch*, 2 *Vern.* 491. *i.* 571.

132. Nor sickness or lameness, although declared to be incurable; it is misbehaviour only to which the statutes apply. *Rex v. Hales Owen*, *Strange* 99. *i.* 572.

133. Where, however, the apprentice appeared to be an idiot, the court held that he might be discharged. *Anon. Skin.* 114. *i.* 570.

134. A master cannot force his apprentice to go beyond the seas, even on the ground of better learning the business, unless it be expressly so agreed, or the nature of the apprenticeship import it. *Coventry v. Woodhall*, *Hob.* 134.

135. It seems now to be settled that the sessions have original jurisdiction as to discharging apprentices, and that the parties need not first apply to a single justice. *Rex v. Johnston*, *Salk.* 68. *Str.* 704. *i.* 572.

136. For the application which the 5 *Eliz. c. 4. s. 35.* directs to be made to a private justice, seems to mean only to arbitrate and accommodate the dispute; for if he cannot compound the matter, he is to take bond for the appearance of the party at the sessions. *Rex v. Heaseman*, *Annelly's Rep.* 101. *i.* 575. *Ca. temp. Hardw.* 101.

137. This authority, however, must be exercised at a *general* sessions; for it has been held, that justices cannot discharge an apprentice at a *private* sessions. *Anonymous*, *Skin.* 98. *i.* 570.

138. It was also formerly held, that the power of the sessions extended only to discharge apprentices from such trades as are specially named in the 5 *Eliz. c. 4.* *Rex v. Gately*, *Salk.* 471.

139. Or at least that the statute cannot extend to arts and mysteries of new inventions, and which did not exist at the time the act passed. 1 *Rol. Rep.* 10. 1 *Vent.* 326, 346.

140. But in a subsequent case this objection to an order of discharge was given up as untenable. *Rex v. Amies*, 1 *Bott.* 574.

141. And it was said, and not denied by the court, that it is now settled that this power extends to other trades than those mentioned in the act. *Rex v. Collingbourn, Str.* 603.

142. And although 5 *Eliz. c. 4.* only authorizes the justices to punish; yet they may discharge an apprentice from a bad master, and a bad apprentice from a master; for the clause does not restrain, but enlarges their power over apprentices beyond the power given them over masters, and they may inflict corporal punishment or discharge an apprentice at their discretion, and this whether the complaint be on the part of the apprentice or the master. *Hawkesworth v. Hillary*, 1 *Saund.* 315. i. 569.

143. Although no previous application have been made to a justice out of sessions. *Rex v. Johnston, Salk.* 68. i. 572.

144. It was formerly considered that, as 5. *Eliz. c. 4. s. 35.* gives no express directions on this subject, the sessions could not order any part of the apprentice fee to be returned, but is now held that this authority is a necessary incident to their power to discharge. *Duhamel's case, Skin.* 108. i. 570.

145. And the money may be ordered to be returned, although the apprentice were bound to a trade not mentioned in the statute. *Rex v. Amies. i.* 574.

146. It has been said, that although there must be a *summons* of the master, it needs not be set forth in the order; nor needs the order state that the master was heard; for that *summons* and *default* are equal to *appearance*. *Ibid.*

147. But this opinion may be doubted; for the appearance of the party being expressly required by the statute, *appearance* is thereby made an essential requisite of the jurisdiction of the sessions; and therefore an order was quashed by Lord *Hardwicke*, because it did not appear on the face of it that the master had *appeared*, or had made *default*. *Rex v. Heaseman, Annelly's Rep.* 101. i. 575.

148. The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy: otherwise, if the master stay away, the apprentice can never be discharged. *Ditton's case, 2 Salk.* 491.

149. The order also should state the reason of the judgment; for the statute requires the sessions to express the cause of the discharge. *Rex v. Heaseman, Annelly's Rep.* 101. i. 575.

150. The order also must be under the hands and seals of the justices. *Anon. Salk.* 470. i. 571.

151. The order also must be *inrolled* among the records of the sessions. *Rex v. Hales Owen*, *Str.* 99. i. 572.

152. The sessions of the place where the parties *live* have jurisdiction on this subject; and therefore where *A.* was bound and inrolled apprentice to a freeman in *London*, but lived with his master in the county of *Middlesex*, it was held, that the sessions of *the county* had a *concurrent* jurisdiction with the sessions of *the City*, and might discharge the apprentice in *Middlesex* for causes arising in *London*. *Rex v. Collingbourne*, *Str.* 663. i. 573.

Remedy 153. The master is entitled to such monies as the *where ap-* apprentice may earn during his absence. And where *prentice runs* an apprentice, having run away to sea, served on away, &c.

board a privateer, which, before his time was expired, took a considerable prize, of which his share amounted to a large sum of money, Lord *Hardwicke* held, that there was no relief in equity to the master's claim of such earnings; but, under particular circumstances of the case, a compromise was recommended, and took place. *Hill v. Allen*, 1. *Ves.* 83. i. 566. n.

154. A waterman's widow had an apprentice who went to sea, and earned two tickets, which got into the hands of a third person, from whom it was held that she might recover them in an action of trover. *Barker v. Dennis*, *Salk.* 68. i. 527.

155. Where a captain of a ship detained an apprentice, the court held that the master might recover a compensation for his services. *Eades v. Vandeput*, 5 *E. R.* 39. *in notis.*

156. And where an apprentice had been seduced from his service to work for another, it was determined that the master might waive the tort, and bring *indebitatus assumpsit* for work and labour done by the apprentice, against the person who employed him. *Lightly v. Clouston*, 1 *Taunt.* 112.

157. But the enticing away an apprentice is not indictable; the remedy is by action on the case, to support which, it is said, the binding must be by indenture. *Rex v. Daniel*, 6 *Mod.* 182. *Smith v. Birch*, i. 528.

158. The 21 *H.* 8. c. 7. making it felony in servants going away with their master's goods with an intent to steal them, does not extend to apprentices. See 1 *Hale*, 505.

159. And the 12 *Anne*, st. 1. c. 7. making it felony without clergy to steal to the value of 40s. in any house &c. no person being therein, extends only to such apprentices as are above fifteen years of age.

being seduced away; &c.] APPRENTICE. [*Assigning Appres. &c.* 57

VII. *Of assigning Apprentices; and of the Death or Insolvency of the Master.*

160. By the custom of *London*, an apprentice may be turned over from one master to another; but, without a special custom, he cannot be assigned, although he signify his assent by indorsing the indenture. *Dalton, c. 58. Rex v. Charnel, 3 Keb. 578. i. 578. Baster v. Burfield. i. 581.*

161. So also by the custom of *London*, when the master dies, his personal representative shall instruct the apprentice, or provide another master. *Rex v. Peck, Salk. 66. i. 579.*

162. The sessions, however, cannot judge upon an assignment and declare it to be void or not, since they cannot try the validity of a deed. *Rex v. Barnes, Str. 48. i. 586.*

163. Therefore an order that an apprentice, whose master was dead, should serve the remainder of his time with the widow's second husband was quashed; for the justices cannot assign an apprentice. *Rex v. Chaplin, Comb. 224. i. 579.*

164. So also an order that the executors of a master should keep an apprentice who had been bound to the testator under 5 *Elix. c. 4.* is bad; for the relation of master and apprentice is personal, and is therefore dissolved by the death of the master. *Rex v. Pett, Show. 405. i. 579.*

165. Therefore, on the death of the master, the apprentice may hire himself as a servant to another master, and receive the wages to his own use. *Rex v. Eakring, i. 585.*

166. For, the apprenticeship being dissolved, the personal representatives of the master have no concern with or controul over the apprentice. *Rex v. Peck, Salk. 66. i. 579.*

167. But where the master covenanted, not only to instruct the apprentice in the arts and mysteries of the trade, but to find him in board and lodging, it was held that an action for breach of covenant lay against the master's executors for turning him out of doors after the testator's death. *Wadsworth v. Ex. of Guy, 1 Keb. 820. i. 578.*

168. For, by *Holt, Chief Justice*, it would be very hard to construe the death of the master to be a discharge of the covenant; and it is said by *Salkeld*, that the executor is liable in covenant for not instructing his testator's apprentice, if he do not find him another master. *Rex v. Peck, Salk. 66. i. 579.*

169. But to render the personal representatives of the master liable, the "executors or administrators" must be named in the deed. *Barter v. Burfield*, i. 581.

170. And such an assignment is not absolutely void, but amounts to a contract between the two masters that the child shall serve the assignee; and it was likened to the case of assigning a bond, which, although it were not assignable in point of interest, yet was a covenant that the assignee should receive the money to the other's use. *Caistor v. Eccles*, *Lord Raymond*, 1683. i. 580. *The Holy Trinity v. Shoreditch*, *Str.* 10. i. 580.

171. So also where a master died intestate and insolvent, and his widow, before administration, assigned him to another master for the remainder of his time, the court held it good by equitable construction, as to the gaining a settlement, though an assignment of an apprentice is not a strictly legal transaction, because the person of a man is not strictly and legally assignable. *Rex v. East Bridgford*, i. 581.

172. But the assignment in such case must be legally stamped as an agreement. *Rex v. St. Paul's Bedford*, 6 T. R. 452. i. 583.

173. The bankruptcy of the master is not a cancelling of the indentures. *Rex v. Buckingham*, *Lord Raymond*, 1352. i. 529.

174. In such case the commissioners generally recommend it to the creditors to allow the apprentice a gross sum out of the estate, for the purpose of binding him to another master, as it would be hard to make him come in as a creditor under the commission; but this, although equitable and just, must be considered as an indulgence and not as a right, for the court can only order him to be admitted as a creditor. *Cooke's Bankrupt Law*, 157; and see cases of *Barwell v. Ward*, 1 Atk. 261, and *Ex-parte Sandby*, *ib.* 149, there cited.

175. See as to the death of the master, *Art* 108, *ante*.

VIII. Of Parish Apprentices.

176. By 43 Eliz. c. 2. s. 5. the churchwardens and overseers, or the greater part of them, by the assent of two justices, may bind out poor children to be apprentices when they shall see convenient, till such manchild shall come to the age of 24 years; and such womanchild to the age of 21, or the time of her marriage; the same to be as effectual to all purposes as if such child were of full age, and by indenture of covenant bound him or herself.

Who shall be bound, and to whom.

177. But now by 18 *Geo. 3. c. 47.* the apprenticeship for a male child, pursuant to the last mentioned statute, shall be for no longer term than till such child shall come to the age of twenty-one years.

178. And by 56 *Geo. 3. c. 134. s. 7.* it is enacted, That it shall not be lawful for any parish officers to bind out any child as a parish apprentice, until such child shall have attained the age of nine years.

179. By 8 and 9 *W. 3. c. 30. s. 5.* where any poor children shall be appointed to be bound apprentices pursuant to 43 *Eliz. c. 2.* the person to whom they are so appointed to be bound, shall provide for them, according to the indenture signed and confirmed by the two justices, and also execute the other part of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens or overseers of the poor, before any two justices for that county, &c. he or she for every such offence, shall forfeit the sum of 10*l.* to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said justices, to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person to whom any poor child shall be appointed to be bound, if he or she shall think themselves aggrieved, his or her appeal to the next general or quarter-sessions of the peace for that county, &c. whose order therein shall be final.

180. By 56 *Geo. 3. c. 134. s. 1.* before any child shall be bound apprentice by the overseers of the poor of any parish, &c. such child shall be carried before two justices of the county, &c. wherein such parish, &c. shall be situate, who shall inquire into the propriety of binding such child apprentice to such person to whom it shall be proposed to bind such child; and such justices shall particularly inquire and consider whether such person reside, or have his, or her, place of business, within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit, in the judgment of such justices, that such child should be placed apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or

Persons receiving apprentices shall provide for them and execute the indentures,

Child to be examined by the justices &c. before binding.

mother, or either of them, and shall particularly inquire as to the distance of the residence or place of business of the person to whom it shall be proposed to place such child, and the means of communication therewith: and such justices shall also inquire into the circumstances and character of such person; and if such justices shall upon such examination and inquiry think it proper that such child should be bound apprentice to such person, such justices shall make an order, declaring that such person is a fit person to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place to which such child shall belong, shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer or overseers as the warrant for binding such child apprentices as aforesaid; and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other

To what distance from child's parish. parties thereto: provided always, that no such child shall be bound apprentice to any person residing, or having any establishment in trade, at which it is intended that such child shall be employed, out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of *London*, in which case the justices who shall authorize the apprenticing of such child, may make a special order for that purpose, in which such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person residing or having an establishment in trade at a greater distance than forty miles from the parish or place to which such child shall belong.

181. By s. 4. declaring that whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong; it is enacted, That the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated.

182. It is discretionary in the parish officers to select such chil-

den whom they shall think their parents are not able to maintain. *Rex v. Crosse*, Comb. 289. i. 604.

183. And the justices may force the master to take a parish apprentice; for this power is consequential to their authority to put him out. *Anonymous*, Salk. 67. i. 604.

184. And therefore, although the statute directs the penalty to be levied by distress, &c. yet it is held, that the person refusing to receive, to keep, or to provide for such apprentices, may be indicted for disobeying the order. *Rex v. Gould*, Salk. 381. i. 605.

185. If, however, the parish-officers select an improper person, as, if they offer to bind a poor girl apprentice to a merchant, it is in the discretion of the sessions to judge whether this is proper or not. *Minchamp's case*, 2 Salk. 491. i. 605.

186. Therefore where a poor girl, who was only eight years of age, was bound apprentice to the inhabitant of a parish who held the sheaf or great tithes of the parish, but had no glebe, or house, or barn appropriated to the said tithes, and the sessions confirmed the indenture, the court held it good; for it is for the sessions to judge of the fitness both of the master and apprentice. *Rex v. Saltern*, 169. i. 613.

187. And it is said to have been the opinion of all the judges, that a parish apprentice may be put to a clergyman. See 1 Show. 78. i. 604.

188. So a female parish apprentice bound to a day-labourer to learn the art and mystery of a housewife, has been held good. *Rex v. St. Margaret's Lincoln*, i. 610.

189. A person occupying land in a parish, but living out of it, is compellable, under the 43 Eliz. c. 2. to receive a parish apprentice. *Rex v. Clap*, 3 T. R. 107. i. 610. *Rex v. St. Margaret's Lincoln*, i. 610.

190. And the apprenticeship of a poor boy, bound by the overseers of *St. Nicholas* in the town of *Nottingham*, to a person living in the parish of *Barford* in the county of *Nottingham*, has been held good; for, by 43 Eliz. c. 2. overseers are to bind apprentices "where the justices shall see convenient," and whether in or out of the parish is not specified; but *quære*, whether the overseers can, in such a case, compel a master to receive such apprentice under 3 and 9 Will. 3. c. 30. s. 5. *Rex v. St. Nicholas Nottingham*, 2 T. R. 726. i. 616.

191. And a custom to bind only to occupiers of a particular description, as to occupiers of land of 10l. a-year and upwards, is not good. *Rex v. Saltern*, 1 Bott. 613.

192. It has been determined, that where several persons hold land in partnership, some of whom actually reside on and occupy it, and others reside at a distance in *another parish*, the latter as well as the former are bound to take parish apprentices, if in other respects they are fit persons to take them. *Rex v. John Barwick*; 7 T. R. 33. i. 624.

193. So also, in binding apprentices under 20 Geo. 3. c. 36. it is not necessary that the master should actually reside within the parish; if he be an *occupier* there it is sufficient; for *inhabitant* and *occupier* are, for this purpose, synonymous. *Rex v. Tunstead*, 3 T. R. 533. i. 622.

194. By 1 Geo. 4. c. 19. s. 112. no officer of his Majesty's forces, residing in barracks or elsewhere, under military law, shall be liable to have any apprentice bound to him.

195. The magistrates cannot order the master of an apprentice to allow him wages during the term of his apprenticeship, they can only order him a maintenance as an apprentice; nor can they order him any thing after the term is ended. *Rex v. Wagstaff*, i. 605. fo. 225.

For what time, and how to be bound. 196. A parish apprentice may be bound for a shorter time than the statutes require, though not for a longer period. *Rex v. Chalbury*, i. 606.

197. A parish indenture not made for any certain time, is not thereby vitiated, the statute, in respect of the time, is only directory. *Rex v. Wolstanton*, i. 606.

198. An indenture binding a poor girl an apprentice is not void for want of the alternative "or till marriage." *Rex v. St. Petrox*, i. 607.

199. Where an indenture was signed only by one churchwarden and one overseer, the court held, that in the absence of any proof of its having been executed by less than a majority of the proper officers, it might be held good, by intending that there was by custom in that particular parish only one churchwarden who, with the one overseer, forming a majority, would be sufficient to bind the apprentice; and the court also said, that if such an indenture could be made good by intendment, they were bound to make such intendment. *Rex v. Hinkley*, 12 E. R. 361. *supp.* 11.

200. And more recently an indenture binding a parish apprentice, was held to be valid, although signed only by one overseer and one churchwarden, for by custom there may be but one churchwarden; and if so, it is necessary that all the powers of the 43 *Eliz.* should be

vested in him, since otherwise the act would be nullified as to those parishes in which such a custom prevails. *Rex v. Earl Shilton*, 1 B. and A. 275.

201. But the court held, in one instance, that the 5th section was not satisfied by a compulsory binding by two persons, styling themselves churchwardens and overseers, who had been appointed the overseers at a time when one of them was churchwarden, (which latter continued sole churchwarden for about two months afterwards) when the other overseer was appointed to be churchwarden in his place. *Rex v. All Saints, Derby*, 13 E. R. 143. *supp.* 11.

202. Now, however, by 51 Geo. 3. c. 80. it is enacted, That all indentures for the binding of parish apprentices, and all certificates of the settlements of poor persons which have been heretofore executed and signed by two persons only, acting, or purporting to act in the capacity of churchwardens, as well as of overseers of the poor, and also all such indentures and certificates, as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons, as churchwardens, and distinct persons as overseers of the poor, according to the 43 Eliz. c. 2.

203. Provided by s. 2. that nothing in this act contained, shall extend to do away, or alter any decision which may have taken place in any court of law, respecting the binding of any parish apprentice, or the settlement of any poor person before the passing of this act.

204. The last mentioned statute extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer; and therefore an indenture in such case, signed by two parish officers, one of whom acted in a double capacity, was held to be valid. *Rex v. St. Margaret's, Leicester*, 2 B. & A. 200.

205. Since the 13 & 14 of Car. 2. c. 12. an indenture of apprenticeship, executed by the overseers of a township, which has no churchwardens or chapelwardens, and maintains its own poor separately, is a valid indenture, although neither of the churchwardens of the parish at large, within which the township is situate, join in the execution; and this operation of the statute 13 & 14 Car. 2. is not affected by any of the subsequent statutes. *Rex v. Nantwich*, 16 E. R. 228. *supp.* 15.

206. By 54 Geo. 3. c. 107. s. 1. it is enacted, That *Regulations* all indentures for the binding of poor apprentices, and *as to signing* all certificates of the settlements of poor persons, *indentures.* which have been heretofore signed and executed, or which shall hereafter be signed and executed, by a person or persons, who at the time of his or their signing or executing such indenture or certificate of settlement, acted as church-warden or churchwardens, chapelwarden or chapelwardens, of the town, hamlet, or chapelry, binding such poor apprentice, or granting such certificate of settlement, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet or chapelry: provided always, that such person or persons shall have been duly sworn, &c. churchwardens of the parish, &c. in which the township, &c. binding such poor apprentice, or granting such certificate be contained, or churchwarden or chapelwarden of such township, &c.

207. By s. 2. all indentures for the binding of poor *Signing.* apprentices, and all certificates of the settlement of poor persons, which shall have been theretofore signed and executed, or which may thereafter be signed and executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for, or appointed in respect of such township, &c. or the major part of them, shall be deemed and taken to be as good, valid, and effectual, as if the said indentures and certificates had been signed and executed by such overseers and the churchwardens of the parish wherein such township, &c. is situate, or the major part of them.

208. Provided always and further enacted, by s. 3. that nothing in this statute contained, shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act.

209. Parish indentures must be assented to by two justices in the presence of each other, for if this act be done by them separately, the indenture is void. The law has, in this case, considered the justices as the guardians of the children, and their assent is an act of a judicial and not merely of a ministerial nature, and whenever the act is judicial they must confer together. *Rex v. Hamstall Ridware*, 3 T. R. 380. i. 620.

210. *Sed quare*, for an order of removal, signed by two justices separately, is not absolutely void, but only voidable, if regularly appealed against. *Rex v. Stotfold*, 4 T. R. 596. ii. 634.

211. The assent of the two magistrates, however, to a parish indenture is sufficiently signified by one of them signing it alone, and being afterwards present when the other signs it. *Rex v. Winwick*, i. 625. 8 T. R. 554.

212. Where an indenture stated that the overseers and churchwardens of *M.* in the county of *Warwick*, with the consent of the justices of the peace for the said county, had bound a pauper apprentice to *J. W. of H.* in the county of *Leicester*; and the justices, in their written consent in the margin, described themselves as justices of the county *aforesaid*, the court held that it sufficiently appeared that they were justices of the county of *Warwick*. *Rex v. Hinckley*, 1 B. & A. 273. *supp.* 214.

213. By 56 Geo. 3. c. 134. s. 2. in all cases where the residence or establishment of business of the person to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the first day of October 1816 shall be allowed, as well by two justices for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices for the county, &c. within which the place shall be situated wherein such child shall be intended to serve: provided always, that no indenture shall be allowed by any justice for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture, in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice for the county, &c. within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice.

By county magistrates in towns. 214. By s. 3. the allowance of two justices for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices may in other respects have an exclusive jurisdiction.

No settlement unless so allowed, &c. 215. By s. 5. no settlement shall be gained by any child who shall be bound by the officers of any parish, township or place, by reason of such apprenticeship, unless such order shall be made, and such allowances of such indenture of apprenticeship shall be signed, as hereinbefore directed.

Penalty for non compliance. 216. By s. 6. in case any overseer shall bind an apprentice to any person without having obtained such order and such allowances as hereinbefore required; and in case any person shall receive any such apprentice as so bound, without such order and allowances having been first obtained, the said overseer and the said person, shall each respectively forfeit the sum of 10*l.* for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered.

Age. 217. And by s. 7. no parish-officers shall bind out any child as parish apprentice until such child shall have attained the age of nine years.

218. And by s. 11. no indenture of apprenticeship, by reason of which any expence whatever shall at any time be incurred by the public parochial funds, shall be valid, unless approved of by two justices, under their hands and seals, according to the provisions of the 43 *Eliz. c. 5.* and of this act.

219. If, however, a poor infant bind himself voluntarily, without the interference of the parish officers, the allowance of the magistrates is not necessary. *Rex v. St. Mary, Reading. i. 605.*

220. For an infant may make an indenture for his own benefit. *Newberry v. St. Mary's, ii. 363.*

221. And if a parish apprentice be bound it is not necessary that the master should sign the counterpart. *Rex v. Fleet, i. 611.*

222. But it seems that if the master do execute the indenture, he shall not be allowed afterwards to appeal, in order to be relieved against it, for he is concluded by his own deed. *Rex. v. Saltern, i. 613.*

223. Nor is it necessary to the validity of parish indentures that

the apprentice should sign the deed. *Rex v. St. Nicholas*, 2 T.R. 726.

224. And it has been determined, that where a poor boy was put out an apprentice by a parish to a master, who was only between fourteen and fifteen years of age, the indentures were good notwithstanding the infancy of the master. *Rex v. St. Petros, Dartmouth*, 4 T. R. 196.

225. After a parish apprentice has attained twenty-one years of age, he may, by agreement between himself and his master, vacate the indentures; and the assent of the parish officers is not necessary to the validity of such agreement. *Rex v. Harburton*, i. 615.

226. For at twenty-one the apprentice is *sui juris*, and his discharge from the indenture concerns, at that time, himself and his master only, and there is no necessity to procure the assent of the parish officers. *Rex v. Ecclesal Bierlow*, i. 608.

227. But an agreement between a master and a parish apprentice, that the apprentice shall work when he pleases on his own account, and pay the master so much a-week in satisfaction of his service, is not a dissolution of the indentures. *Rex v. Offerton*. i. 611.

228. Nor are the indentures of a parish apprentice cancelled by being delivered up by the son of the master to whom he was bound. *Rex v. Notton*, i. 609.

229. And although the master, after three years' service, tell the apprentice to go about his business, and work for himself, and he accordingly works with other persons for the remainder of the term, and applies the money he earns to his own use, without his master's requiring him to account or knowing where he was; yet if the indentures are neither cancelled nor given up, this is no dissolution of the apprenticeship. *Rex v. St. Luke's, Burr. S. C.* 542. i. 608.

Death of master, &c. 230. By 32 Geo. 3. c. 57. s. 1. in case of the death of the master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than five pounds has been paid, such covenant as is before mentioned in that act, for the maintenance of such apprentice, inserted in the indenture of apprenticeship by which such apprentice shall have been bound, shall not be in force for any longer time than three calendar months next after the death of such master or mistress, and during such three months such apprentice shall continue to live with and serve as an apprentice, the executors and administrators of such master

or mistress, some or one of them, or such person as some or one of them shall appoint; and the master or mistress whom such apprentice shall serve during the said three months, and also such apprentice shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices; and in all parish indentures of apprenticeship, there shall be annexed to the covenant for such maintenance as aforesaid, a proviso declaring, that such covenant shall not be made to continue in force for any longer time than for three calendar months next after the death of such master or mistress; and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master, for the maintenance of the apprentice, shall be deemed to be in force for no longer time than for three calendar months next after the death of such master or mistress, any thing in any such covenant to the contrary notwithstanding.

Serving 231. By s. 2. within three calendar months after the
residue of death of such master or mistress, any two justices of
term. the county or place where such master or mistress shall have died, on application made to them by the widow of such master, or by the husband of such mistress, or by any son or daughter, brother or sister, or by any executor or executrix, administrator or administratrix, of such master or mistress, may, by indorsement on any such indenture of apprenticeship, or the counterpart thereof, or by any other instrument in writing, order that such apprentice shall serve as an apprentice any one of such persons so making such application as aforesaid (such person having lived with, and having been part of the family of, such master or mistress at the time of his or her death), as the said justices shall think fit, for the residue of the term mentioned in such indenture; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and from and after such order shall be made, the executors and administrators, and the personal assets, estate, and effects of the master or mistress so dying as aforesaid, shall be released and discharged from any covenant whatsoever, contained in any such indenture of apprenticeship, on the part of such master or mistress, his or her executors or administrators; and the person obtaining the same shall be deemed to be the master or mistress of such apprentice, in like manner as if such apprentice had been originally bound to such master or mistress; and such last-mentioned master or mis-

his or her executors and administrators, each and every of shall be bound by the several covenants contained in any indenture of apprenticeship on the part of the master or mistress therein named, his or her executors or administrators, in like manner as if such master or mistress obtaining such order as aforesaid duly executed the counterpart of such indenture; and such master or mistress and apprentice shall be liable to the several provisions, and regulations which shall then be in force for better government and good order of masters and parish apprentices; and all justices of the peace shall have the like powers respect thereto, as they shall then have by any act or acts of parliament relating to parish apprentices.

By s. 3. all the regulations directed to take place on the death of the original master or mistress, shall be deemed to relate to the like event of the death of any subsequent master or mistress, and to their several relations and representatives before enumerated during the continuance of the term mentioned in any such indenture of apprenticeship.

By s. 4. in case no such application shall be made as aforesaid within three calendar months next after the death of such master or mistress, or in case such two justices, to whom any such application shall have been made, shall not think fit that such apprenticeship should be continued, then the said apprenticeship shall terminate in like manner as it would have been at the expiration of the term in the indenture mentioned.

By s. 5. nothing hereinbefore contained shall extend to any apprentice, but to such only as shall be living with, and shall be part of the family, or shall be in the actual employment of the original master or mistress, or of any subsequent master or mistress appointed by virtue of the several provisions of this act, at the time of the death of any such masters or mistresses respectively.

235. By s. 6. in case any such original master or mistress, or any master or mistress appointed by virtue of this act, shall, during the term of any such parish apprenticeship, or if the executors or administrators of such masters or mistresses, having assets, shall, during three calendar months neglect to maintain and provide for such apprentice, according to the terms of such covenant, or if the justices of the county or place in which the parish or place be, to which such apprentice shall belong, on complaint of the apprentice, or of the churchwardens and overseers of the poor

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mistress as aforesaid, under and by virtue of the said last mentioned act, and such master and mistress shall have been convicted of such offence, in consequence of such prosecution as aforesaid, or shall have been found guilty thereof in any action brought at the suit of the party injured, the churchwardens and overseers of the poor of any parish or place, or the major part of them, shall not bind any other apprentice upon such person; but whenever such person would be compellable to take a parish apprentice, any two justices of the county or place where such person shall reside, upon application made to them by the churchwardens and overseers of the poor of such parish or place may order that such person shall pay into the hands of such churchwardens and overseers of the poor, some or one of them, a sum not exceeding the sum of 10*l.* nor less than 5*l.* for the purpose of binding out the child (intended to be bound) an apprentice, with the approbation of such two justices; and in case such person shall refuse to pay such sum as aforesaid, then such two justices, by warrant under their hands and seals, may levy the same by distress and sale of the goods and chattels of such person, together with the reasonable expences of such distress: provided always, that such master or mistress

Appeal.

from whom any parish apprentice shall be discharged under and by virtue of the 20 *Geo. 2. c. 19.* may appeal against the order made for such discharge and against any such order made for payment of any such money, or for payment of any money in lieu of a subsequent binding, by virtue of this act, to the next general quarter-sessions of the peace of the county or place where such orders, any or either of them, shall be made; and upon such appeal the said court of general quarter-sessions shall finally determine the same, and in their discretion allow to all parties their reasonable costs; and no such distress for enforcing the payment of any such sum or sums of money as are last mentioned, shall be taken until after the general quarter-sessions of the peace to be holden next after any such order as aforesaid shall be made, in case the person who is ordered to pay the same shall, within seven days after notice given to him or her of such order being made, give notice to such churchwardens and overseers of the poor, some or one of them, of such intended appeal; and in case such person shall fail to appear in support of his appeal at such general quarter-sessions, then the sum of 40*s.* shall be added to the expences of the distress before directed to be taken, and levied accordingly.

238. By s. 9. nothing hereinbefore contained shall extend to any indenture of apprenticeship, where a larger sum than 5*l.* shall be given.

239. By s. 10. no indorsement on any parish indenture of apprenticeship hereinbefore mentioned, shall be charged with any higher duty than with the duty imposed or to be imposed on parish indentures of apprenticeship.

*Restoring
clothes and
apprentice
fee.*

240. By s. 11. in every case where any parish apprentice whatsoever shall be discharged from his apprenticeship by two justices, under and by virtue of the statute of 20 *Geo.* 2. c. 19. such two justices may order such master or mistress to deliver up to such apprentice his or her clothes and wearing apparel, and also to pay to such churchwardens or overseers of the poor of the parish or place to which such apprentice shall belong, some or one of them, a sum not exceeding 10*l.* to be applied for the again binding out such apprentice or otherwise, for his or her benefit, as to such justices shall seem meet, and also to pay a sum not exceeding 5*l.* in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and on refusal to pay the sums so ordered or any part thereof, such two justices, by warrant under their hands and seals, may levy the same by distress and sale of the goods and chattels of such master or mistress, together with the reasonable expences of

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such distress; and also, may compel such churchwardens and overseers of the poor, some or one of them, to enter into a recognizance for the effectual prosecution by indictment of such master or mistress for such ill treatment of any such apprentice so discharged as aforesaid, and also order that the expences of such prosecution shall be reimbursed to such person entering into such recognizance, one moiety thereof out of the poor-rates of the parish or place to which such apprentice shall belong, and the other moiety thereof out of the common stock of the county in which such parish or place shall lie; and in case the churchwardens and overseers of the poor of such parish or place for the time being shall refuse to pay such their moiety as aforesaid, such two justices, by warrant under their hands and seals, may levy the same by distress and sale of the goods and chattels of such churchwardens and overseers of the poor, any or either of them, together with the reasonable expences of such distress.

No appren-

241. By s. 12. in every case where any parish apprentice shall have been so discharged from any master or

binding or assigning of such apprentice to any other person, and, if they shall see fit, shall also require the person so giving notice of removal to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expence of assigning or binding such apprentice to any other person to be approved by the said justices; and the person to whom such apprentice shall be so bound or assigned, shall be subject to the same rules and regulations as the person to whom such apprentice shall be originally bound; and in case any such master or mistress shall remove as aforesaid, and shall take any such apprentice to any other place without such order as aforesaid, or shall wilfully abandon and leave any such apprentice without giving such notice as aforesaid, every person so offending shall forfeit the sum of ten pounds for every such apprentice, to the churchwardens and overseers of the poor of the parish, or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled for the use of the poor of the same parish or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same.

Provisions of 32 G. 3. c. 57. enforced with respect to assigning or discharging apprentices.

245. By s. 9. it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge from his or her service any parish apprentice, without such consent of justices as is directed by 32 Geo. 3. c. 57; and no settlement shall be gained by any service of such apprentice after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid.

Penalty on discharging apprentices without the consent of justices, 10l.

246. By s. 10. any person who shall put away or transfer any parish apprentice to another, or who shall in any way discharge from his or her service any parish apprentice, without such consent as aforesaid, shall forfeit a sum not exceeding ten pounds for every apprentice so transferred.

Penalties may be recovered by information, &c.

247. By s. 12. all penalties and forfeitures imposed for any offence against this act shall be recovered by information before any two justices of the county or district where such offence shall be committed.

Justices empowered to dispose of penalties.

248. And by s. 13. the justices before whom any such penalty shall be recovered, may direct such penalty, after deducting the necessary costs and charges attending any information, to be paid either to the

1. giving information of the offence for which such penalty be incurred, or to the overseer of the poor of the parish or township in which such offence shall have been committed, or by officers whereof such apprentice shall have been bound, for the 'the poor of such parish or township, or in the binding of the justice respecting whom such offence shall be committed to other person, or to be applied to any one or more of such cases, as to such justices shall seem meet.

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sal- 249. By s. 14. in case of non-payment of any penalty hereby imposed, the same shall be levied by distress and sale of the offender's goods and chattels, by sent under the hands and seals of the justices before whom offender shall have been convicted, or of any other two justices of the same county or district; and for want of such distress offender shall be committed to the common gaol or house of correction for any period not less than one nor more than six months to be appointed by the justices before whom such offender be convicted.

2. By s. 15. the conviction of all offences against this act be in the form following (that is to say) :—

BE it remembered, that on the day of , in the year of our Lord , is convicted before us, , his Majesty's justices of the peace for the county of the information of , for that [here state the offence] contrary to the form of the statute passed in the fifty-sixth of the reign of his Majesty King George the Third, intituled 'An act to regulate the binding of parish apprentices;' and for which offence we do adjudge that the said shall forfeit and pay the sum of , to be paid and applied as follows [here state application of the penalty]; and in case such penalty shall not be paid by the said , or levied by distress upon goods and chattels, within days from the date of his conviction, we adjudge that the said shall be imprisoned in for the space of . Given under our hands and seals the day and year first above mentioned."

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posed. 251. By s. 16. in case any person convicted for any offence against this act shall not pay the penalty within one calendar month next after such conviction, the justices making such conviction, or any two other justices of the county or district, may issue their war-

rant for the apprehending and imprisoning of such offender, notwithstanding such offender may have goods or chattels whereby such penalty might have been levied.

Power of appeal. 252. By s. 17. any person dissatisfied with any act done by any justice of the peace in the execution of this act, may appeal against the same to any court of general or quarter-sessions to be holden for the county within which such act shall have been done, within three calendar months after the fact so complained of, upon giving notice in writing to such justice, and also to the person who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and in case such appeal shall be against any conviction, entering into a recognizance, with two sufficient sureties, before any justice of the county or district within which such conviction shall have taken place, to appear at such general or quarter-sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon; and the justices at such sessions may hear and determine the matter of such appeal, and award costs therein as they shall think fit; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same.

Power of overseers extended to churchwardens for the use of incorporate districts. 253. By s. 18. the provisions and penalties herein contained respecting overseers of the poor shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor, and all the provisions herein contained respecting any parish or place shall extend to any incorporated or other district for the maintenance of the poor; and the officers of any such district, having power to bind apprentices, shall be subject to all the regulations and penalties in this act contained, respecting overseers of the poor.

254. By 8 Ann. c. 9. s. 40. it is provided, That nothing in that act contained, shall be construed to extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant, who shall be placed out at the public charge of any parish or township, or by or out of any public charity, or to require the stamping with any such new stamp, as mentioned in that act, of any indenture, articles, covenant, agreement, or contract, relating to such apprentice or servant, as in the act last mentioned.

255. And this exempting clause does away with the necessity of inserting in words at length the premium given by the parish officers upon the binding of a poor apprentice, such insertion of the premium being required for no other purpose than to ascertain the amount of the duty. *Rex v. Oadby*, 1 B. & A. 477.

256. By 44 Geo. 3. c. 98. the indentures binding poor children, or other children by public charity, are exempted from the duties upon indentures of apprenticeship given by that act. And in the 59 Geo. 3. c. 184. repealing certain duties granted by 44 Geo. 3. c. 98. and those by 48 Geo. 3. c. 149. there are exemptions from the duties payable by the 55 Geo. 3. c. 184. of all indentures or other instruments, placing out poor children apprentices, by or at the sole charge of any public charity, or pursuant to the 32 Geo. 3. c. 57.

257. See 32 Geo. 3. c. 57. s. 10. *ante* Art. 239.

IX. *Apprentices by Public Charities.*

258. The 7 Jac. 1. c. 3. s. 2. after reciting that large sums of money had been freely given, and might thereafter be given, to be continually employed in the binding out, as apprentices, of a great number of the poorest sort of children unto needful trades and occupations, enacts,

That all sums of money so freely given, at any time within three years previous to the date of that act, or thereafter to be given to any person, to be continually employed for the binding out of apprentices as aforesaid, shall continue, and be from time to time used and employed, to such purposes only, and by such persons, and in such manner and form as shall be hereafter by this present act specified and declared, except the same hath been, or shall be otherwise ordered by the givers thereof; that is to say, that all corporations of all cities, boroughs, and towns corporate, and in towns and parishes not incorporate, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers for the poor for the time being, or the most part of them, where any such sum or sums of money are already given, or shall be hereafter given to be so employed, shall, within the said several cities, boroughs, towns, and parishes respectively, have the nomination and placing of such apprentices, and the guiding and employment of all such monies, and all persons having the guiding of such monies, and offending against the dispositions of the act shall forfeit for every offence 3*l.* 6*s.* 8*d.* half to the poor and half to him who shall sue by debt, plaint, or information.

The party which receiveth the money shall be bound with sureties to repay it.

259. By s. 3. the master, mistress, or dame of every such apprentice shall become bound with one or two sufficient sureties, in double the sum which they and every of them shall so receive with such apprentice, unto the corporation of any such city or town corporate, or to such person or persons in the other towns and parishes not incorporated, appointed by this act to have the guiding and employment of all such sums of money, to repay such sums of money as he or she shall receive with such apprentice, at the end of seven years next ensuing the date of the said obligation, or within three months next after the end of the said seven years: and if such apprentice shall happen to die within the said space of seven years, then within one year after his or her said death; and if the master, or mistress, or dame, to whom any such apprentice shall be bound, shall happen to die within the said space of seven years, then within one year next after his or her death.

260. By s. 4. every such sum of money shall always be put forth and employed by the parties aforesaid that by this act shall have the disposing and employment thereof, within three months after such money shall come to the hands of the said parties; and if at such times there shall not be found fit persons to be bound out apprentices as aforesaid, within the said cities, towns, and parishes where such sums of money are, or hereafter shall be given to be employed as afore is declared, then such of the poorest children of any of the parishes next adjoining shall be bound apprentices in manner as aforesaid, as by the parties which by this act have the disposing and employment of the said sums of money in the cities, towns, and parishes where it was given to be employed, shall be thought fit, taking such bonds of the persons that shall receive the same sums of money so put forth, and with such sureties, and upon such conditions, as is above-mentioned and declared.

261. By s. 5. choice shall be made of the poorest sort of children of every such city, town, and parish, where such monies shall be so given, and whose parents are least able to relieve them: and no such apprentice shall be above the age of fifteen years when he or she shall be so first bound out an apprentice.

Account shall be made of the money employed.

262. By s. 6. every person appointed by this act to have the employing and disposing of any sum of money so given or to be given as aforesaid, within any town or parish not corporate, shall, once every year in the Easter week, or within one month next after Easter-day, make a true and perfect account before four, three, or two justices, dwelling in or next to every the said towns or parishes, of all such sums of money as they or any of them have employed in binding of apprentices by virtue of this act, and of all bonds and obligations taken for the payment thereof, and also of all such sums of money as then shall happen to be remaining in their hands not employed; and also shall, at the making and yielding up of the said account, or within ten days next following, yield and deliver unto such as shall happen next to succeed them, or then to be in the said rooms and places, all such obligations and bonds as by them, or any of them have been before that time taken to the uses aforesaid; as also all sums of money remaining in their hands to be employed as aforesaid, and not employed at the time of the yielding up the said account.

remedy
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263. By s. 7. if any of the parties appointed and trusted by this act to have the disposing and employment of any of the said sums of money, shall in any point or degree break the trust and confidence in them in this behalf reposed, or shall commit any other offence in misemploying of the said sums of money, or any part thereof, or in doing any other act contrary to their duties, and the true intent and meaning of this act, for which there is not by this act any penalty given or appointed; then any person whatsoever may exhibit his petition to the Lord Chancellor, who shall thereupon award commission to such persons as his lordship shall think meet, to inquire, hear, and determine the said offences: and if the commissioners or the most part of them, shall find that any sum of money so given, or to be given, is lost or diminished, then they, or the most part of them, may sue, raise, and collect the said sum of money so lost, wasted, or diminished, upon such person, in places not incorporate, as by this act are appointed to have the guarding and ordering of the said monies, if they or any of them have failed in their said duties in that behalf; or otherwise upon the able inhabitants of such city, town, or parish, where the same shall so happen, as in the discretion of the said commissioners, or the greater part of them, shall be thought fitted; and to return the said commission, and the manner of the execution thereof, into the Court of Chancery within three months after the execution thereof. And if any person shall find himself grieved by any thing done by the said commissioners, then, upon complaint made in the Court of Chancery, the Lord Chancellor shall have full power and authority to order and decree the same as to his lordship shall be thought most fit.

264. It is not necessary to the validity of an indenture of apprenticeship under this statute, that the parson or vicar should be a party to it. *Rex v. Chalbury*, i. 640. n.

265. An indenture, binding out an apprentice, with the consent of the trustees of certain funds, bequeathed for the binding out poor apprentices, which was executed by the master and the apprentice, and recited the trustees to be parties, and in which the consideration paid by the trustees to the master was stated to be 20*l.*, was held to confer a settlement, although it was not executed by the trustees, and although the master actually received only 16*l.* 15*s.* 6*d.* the residue being retained by the agent of the trustees for costs and the expences of the binding. *Rex v. Quainton*, 2 *M. & S.* 338. *supp.* 16.

266. See *ante* Art. 256, as to the exemption from duty of indentures of apprenticeship by public charities.

267. A voluntary yearly contribution or subscription of divers of the inhabitants of a parish, for the purpose of putting out apprentices, boys and girls, brought up at a charity-school in the parish, is a charity within the meaning of the 8 *Ann. c.* 9. s. 40. and exempted from stamp-duty. "It is a public charity and a very laudable one;

it is not necessary that it should be a permanent charity; the reason of the distinction between a public and private charity is obvious; a private one might be calculated to evade the act, a public one cannot be supposed to have been so; this is a public charity within the reason and the letter of the act." Per *Lord Mansfield* Ch. J. *Rex v. St. Matthew, Bethnal-Green, B. & C.* 574. i. 641.

268. So also a bequest of money to "put out such children apprentices as the testator's brother should think fit," is a public charity within 8 *Ann. c. 9. s. 40.* *Rex v. Clifton upon Dunsmore, i.* 641.

269. *Seemle*, that a charitable donation-fund belonging to a parish is a public charity within the exception in the 44 *Geo. 3. c. 98. s. 190.* See *Rex v. Skeffington, 3 B. & A.* 382.

X. Apprentices to the Sea-service.

270. By 5 *Eliz. c. 5. s. 12.* every owner of ships or vessels and every householder, using and exercising the trade of the seas, by fishing or otherwise, every gunner commonly called cannoneer, and every shipwright may take one or more apprentice or apprentices to be bound for ten years, every such apprentice being above seven years of age, the binding to be according to the custom of the city of *London*, to be by indenture, and enrolled at the town where the apprentice shall be an inhabitant, if it be a town corporate—if not, in the next incorporate town, the officers of such town to take only 12*d.* for enrolling the same.

271. An enrolment at the Trinity-House is not sufficient, although there be a clause to that effect in the Trinity-House charter, since the King cannot alter the place of enrolment prescribed by statute. *Poulson's case, i.* 634.

272. The apprentice shall not be prejudiced by the neglect of his master to enrol the indentures, although the stamp-duties be thereby evaded. *Rex v. Gainsborough, i.* 635.

273. By 2 & 3 *Ann. c. 6. s. 1.* it is enacted, That it shall and may be lawful to and for two or more justices in their respective counties and divisions, and for all mayors, aldermen, bailiffs, and other chief officers and magistrates of any city, borough, or town corporate, and likewise to and for the churchwardens and overseers of the poor for the time being, of the several and respective

parishes within the places aforesaid, by and with the consent and approbation of such justices or chief officers, to bind or put out any boy or boys who is, are, or shall be of the age of ten years or upwards, or who is, are, or shall be chargeable, or whose parents are or shall become chargeable to the respective parish or parishes wherein they inhabit, or who shall beg for alms, to be apprentice and apprentices to the sea-service, to any subjects being masters or owners of any ship or vessel used in sea-service, and belonging to any port or ports

within the kingdom of *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*, for so long a time, and until such boys shall respectively attain or come to the age of one and twenty years; and such binding out any such apprentice shall be as effectual in the law, to all intents and purposes, as if such boy were of full age, and by indenture had bound himself an apprentice.

274. To the end that the age of every such boy so to be bound apprentice, shall be mentioned and inserted in his indentures, being taken truly from a copy of the entry in the register book, which copy shall be given and attested by the minister of such parish or parishes wherein such boy's baptism shall be registered, without fee, and may be writ upon paper, or parchment, without any stamp or mark; and where no such entry of such boy's being baptized can be found, two or more of such justices of the peace, and such chief officers, shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the said indentures: and the age of such boy so inserted and mentioned in the said indentures, (in relation to the continuance of his service) shall be taken to be his true age, without any further proof thereof.

275. By s. 2. the churchwardens and overseers of *Churchwardens to pay* the poor of the parish from whence any such boy *down 50s. for boy's* shall be so bound apprentice, shall pay to such *necessary clothing, &c.* master at the time of his binding, the sum of *and be allowed the* fifty shillings, to provide necessary clothing and *same in their accounts.* bedding for sea-service for such boy; and the charges by this act appointed, shall be allowed to the said churchwardens and overseers on their accounts.

Parish apprentices shall not be impressed. 276. By s. 4. no such apprentice shall be impressed, or permitted, or suffered to list or enter himself into the sea-service, until such apprentice arrive at the age of eighteen years.

Apprentice's indentures to be sent to the collector at the port whereunto his master belongs. Collector to enter the same, &c. 277. By s. 5. the churchwardens and overseers of the parish out of which any such boy shall be bound an apprentice, shall send the said indentures to the collector of her majesty's customs, residing at, or belonging to any port or ports, whereunto such masters or owners of ships or vessels, to whom such apprentice and apprentices shall be bound, do or may belong; who shall, in a book, to be by him kept for that purpose, enter every indenture whereby such apprentice and apprentices shall be bound, and which shall be so sent unto him, and shall make an indorsement upon the said indentures of the registry thereof subscribed by the said collector, without taking any fee or reward for the same; and every collector neglecting to enter such indentures, and indorse the same, or making false entries, shall forfeit the sum of five pounds for the use of the poor of the parish from whence such boy was bound apprentice.

Penalty on collector neglecting. 278. And every such collector or his lawful deputy, shall transmit certificates in writing, under his hand, to the lord high admiral of *England*, or to the commissioners of the admiralty for the time being, containing the

Lord High Admiral to grant protections for

such apprentices gratis. name and age of every such apprentice respectively, and to what ship he belongs; and upon receipt of such certificates, protections shall be made and given for such apprentices, till they attain the age of eighteen years, without any fee or reward to be taken for the same; which certificates, so as aforesaid to be given, are not required to be writ upon stamp paper or parchment.

279. By s. 6. every person to whom any poor parish-
Parish-boys bound apprentices may be turned over to the sea-service. boy hath been, or hereafter shall be bound apprentice, according to the 43 Eliz. c. 2. may, with the consent and approbation of two or more justices of the peace of the same county, and dwelling in or near the same parish where such poor boy was bound apprentice, or by, and with the consent and approbation of any mayor, alderman, bailiff, or other chief officer or magistrate of any city, borough, or town-corporate, where such poor boy was bound apprentice, at the request of the master or mistress of such apprentice, or of his or their executors, administrators, or assigns, by indenture assign such poor boy apprentice to any master or owner of any such ship or vessel as aforesaid, for and during the then remaining time of his apprenticeship; all which indentures of assignment are by this act directed to be registered, and certificates thereof given and transmitted by such collector, at the said several ports where such parish apprentices shall be so assigned, and upon receipt of such certificates, protections shall be given for such apprentices till they shall attain the age of eighteen years, without fee or reward.

Indentures of assignment registered, and protection granted.

Such apprentices exempted from the payment to Greenwich Hospital.

280. By s. 7. all such poor boys as are in this act before mentioned or intended thereby to be bound and put out, and such as shall be assigned as aforesaid, during their several apprenticeships, till they shall attain the age of eighteen years, shall be exempted from the payment of the sixpence per month to Greenwich

Hospital.

Masters of ships, &c. obliged to take such apprentices, under a penalty of ten pounds;

281. By s. 8. every subject being master or owner of any ship or vessel, used in the sea-service of the burthen of thirty ton, to the burthen of fifty ton, shall be obliged to take one such apprentice, and one more for the next fifty ton, and one more for each and every hundred ton such ship or vessel shall exceed the burthen of one hundred ton: and such master or owner of any ship or vessel refusing to take such apprentice or apprentices, shall forfeit the sum of ten pounds for the use of the poor of the parish from whence such boy was bound apprentice.

and give an account of their names, &c.
282. By s. 9. every such master or owner so obliged to take such apprentice or apprentices, after his arrival into any port or ports aforesaid, and before he clears out of such port, shall give an account in writing under his hand to the collector of such port to which he belongs, containing the names and numbers of such apprentices as are then remaining in his service.

283. By s. 10. every such apprentice shall be conveyed to the port to which his master shall

be conveyed to the belong, by the churchwardens and overseers of the poor, or their agents, of the parish from which such apprentice is bound, and the charges thereof shall be in the same manner as prescribed by the statute 11 & 12 Will. 3. c. 18 *.

The counterpart of their indentures to be transmitted to the churchwardens, &c. 284. By s. 11. the counterpart of every such indenture shall be sealed and executed in the presence of, and attested by the collector at the port aforesaid, (where such apprentices shall be bound or assigned over,) and the constable or other officer who shall convey such apprentices to their respective masters; which constable or officer shall transmit the counterpart of such indentures to the churchwardens and overseers of the several parishes from whence such apprentices shall be bound.

Justices to determine complaints between master and apprentices. 285. By s. 12. two or more justices of the peace of the respective counties, dwelling in or near any of the ports aforesaid, and all mayors, and other chief officers of any city, borough, or town-corporate, in or near adjoining to such port or ports, to which such ship or vessel shall at any time arrive, may examine, and determine all complaints of hard or ill usage from the several masters to such their apprentices, and also of all such as already have or who shall at any time hereafter, voluntarily put themselves apprentice to the sea-service as aforesaid, and make such orders therein as now they are enabled by law to do in other cases between masters and apprentices.

Collectors to keep a register, &c. and transmit a copy thereof to the quarter-sessions, &c. gratis on penalty of five pounds. 286. By s. 13. every collector in every port, shall keep an exact register, containing as well the number and burthen of all such ships and vessels, together with the masters' or owners' names, as also the names of such apprentices in each ship and vessel belonging to their respective ports, and from what parishes and places such apprentices were respectively sent; and such collectors shall transmit true copies of such register, signed by them, to the quarter-sessions, or to such cities, boroughs, towns-corporate, parishes, or places, so often as they shall be reasonably required so to do; for which copy or copies so to be transmitted as aforesaid no fee or reward shall be taken; and every such collector refusing or wilfully neglecting to transmit such copies, shall, for every such refusal or neglect, forfeit five pounds, for the use of the poor of the parish from whence such boy was bound apprentice.

Officer to insert on the cocket the number of men and boys on board, &c. 287. By s. 14. every custom-house officer, at each and every of the ports aforesaid, shall insert at the bottom of their cockets, the number of men and boys on board the respective ships or vessels at their going out of every such port therein, particularly describing the apprentices by their respective names, ages, and the dates of their several indentures, for which no fee or reward shall be taken.

* Vis. out of the Gaol and Marshalsea money, which by 2 Geo. 2. c. 29. is directed to be paid out of the general county rate.

Persons voluntarily binding themselves apprentices to sea-service, not to be impressed for three years.

Indentures to be registered and protections given for the said three years.

When apprentices are impressed, their masters shall have seaman's wages.

Penalties & forfeitures how levied.

No master of ship to take apprentice under thirteen years old.

No apprentices to the sea-service, of 18 years old, exempted.

Apprentices who voluntarily bind themselves to the sea-service shall not be impressed for three years.

288. By s. 15. every person who shall voluntarily bind himself apprentice to any such masters or owners of any ship or vessel as aforesaid, shall not be impressed into the sea-service for and during the term of three years, to be accounted from the dates of the respective indentures of such voluntary apprentice; all which indentures are to be registered, and certificates thereof transmitted by such collector at the said several ports where such apprentices already have become so bound, or that hereafter shall so bind themselves, in manner and form as aforesaid; upon receipt of which said several certificates, protections shall be given for the said first three years of their several respective apprenticeships, without either fee or reward for the same.

289. By s. 17. where such apprentices shall be impressed or voluntarily enter themselves into the sea-service, the said owners or masters of such apprentices, their executors, administrators, and assigns, shall be intitled to able seaman's wages for such of their apprentices as shall, upon due examination, be found qualified for the same, notwithstanding their indentures of apprenticeship.

290. By s. 18. all the penalties and forfeitures directed by this act shall, by warrant under the hands and seals of any two or more justices of the peace of the same county, city, borough, or town-corporate, be levied by distress and sale of the goods and chattels of the offender; which sale shall be good in the law against such offender.

291. By 4 Ann. c. 19. s. 16. no master shall be obliged to take any such apprentice under the age of thirteen years, or who shall not appear to be fitly qualified both as to health and strength of body for that service; and any widow of the master of such ship or vessel, or the executor or administrator of such master, who shall have been obliged to take such parish-boys apprentice to them, shall have the same power of assigning over such apprentices to any other masters of ships or vessels who have not their complement of apprentices required by the said recited act, to be entertained by them, as is given by the said act to such persons as have taken children apprentices in pursuance of the statute 43 Eliz. c. 2.

292. By s. 17. no person of the age of eighteen years shall have any exemption or protection from his Majesty's sea-service, who shall have been in any sea-service before the time they bound themselves apprentices.

293. By 13 Geo. 2. c. 17. s. 2. every person who not having been used to the sea, shall bind himself apprentice to serve at sea, shall be exempted from being impressed for the full space of three years, to be computed from the time of his binding himself apprentice as aforesaid: and the commissioners of the admiralty, on due proof of the circumstances, shall grant a protection to every such person to secure him from being impressed; all which protections shall be granted without any fee or reward to be taken for the same.

294. An apprentice in the *Greenland fishery*, is no otherwise exempted from being impressed than under the general act of the 13 Geo. 2. c. 17. which exempts all persons from being impressed before the age of eighteen; and every person, who, not having before used the sea, shall bind himself apprentice to serve at sea, for the first three years of such apprenticeship. *Ex-parte Brocke*, 6 E. R. 238.

295. See as to apprentices in the fishing trade, 2 Geo. 3. c. 15. ss. 22, 23, and 50 Geo. 3. c. 108. s. 1.

296. By 2 Geo. 3. c. 15. s. 22, &c. the apprentices, *Apprentices to mariners and fishermen exempted from being impressed.* not exceeding four, of masters or owners of fishing vessels of thirty tons burthen or upwards, and not exceeding two to every vessel under thirty tons, during the time of their apprenticeship, and until the age of twenty, they continuing for the time in the business of fishing only; and also the apprentice to every fishing vessel of ten tons burthen or upwards, employed on the sea-coast during the continuance of his services, shall respectively be exempted from being impressed into the king's service. But see 50 Geo. 3. c. 108. s. 1.

297. An apprentice illegally impressed may regain his liberty by applying for a writ of *habeas corpus*, and the master may bring an action for the detention from his service, but the latter cannot obtain the *habeas corpus*, which can only issue at the instance of the party detained. *Rex v. Edwards*, 7 T. R. 745.

298. It seems that the Lord Chief Justice of K. B. may by his warrant direct the apprentice to be brought up before him, either on the application of the master or the apprentice. *ibid.* See also *Chetwynd's Edit. of Burn*, vol. 1. p. 128.

XI. *Apprentices to Chimney-sweepers.*

299. By 28 Geo. 3. c. 48. the churchwardens and overseers of the poor of any parish or place, with the consent of two justices, in writing, under their hands, may bind out any boy of the age of eight years or upwards, and who is chargeable, or whose parents are chargeable to the parish or place where they shall so be; or who shall beg for alms; or with the consent of the parent or parents of such boy to be apprentice to any person exercising the trade of a chimney-sweeper, until such boy shall attain the age of sixteen years.

300. By s. 2. the age of every such boy shall be mentioned and inserted in such indenture, taken from the copy of the *prentice to be* register attested by the minister of such parish or place where inserted in such boy or boys' baptism shall be registered without the *indenture*. fee or reward, and may be written upon paper or parchment, without any stamp or mark, and where no such copy, such justices shall, as fully as they can, inform themselves of his age, insert the same in the said indenture; and the age so inserted in

the said indenture (in relation to the continuance of his or their service,) shall be taken to be his true age without any further proof thereof.

Form of the indenture. 301. By s. 3. such indenture shall be made according to the form in the schedule stated in the act, and shall not be liable to any higher stamp duty than is charged upon indentures for binding out poor children by their respective parishes or places.

Taking apprentices under the age of eight years. 302. By s. 4. all indentures, covenants, promises, and bargains hereafter to be made or taken, for the taking, employing or keeping of any boy as an apprentice or servant, in the capacity of a climbing-boy or chimney-sweeper, who shall be under the age of eight years, shall be absolutely void to all intents and purposes; and every person who shall take, employ, or keep any such boy, shall forfeit for every such apprentice or servant, any sum not exceeding ten pounds, nor less than five pounds.

Overseers of any township or village may act as churchwardens. 303. By s. 5. in those large parishes where there are several townships or villages, and overseers of the poor are chosen and appointed for each such township or village, such overseers may perform and execute all the acts hereby directed to be performed or executed by the churchwardens or overseers of the poor of the parish or place.

Complaints between masters & apprentices. 304. By s. 6. one justice may enquire into, and determine, as well all complaints of hard or ill usage from the several and respective masters or mistresses; as also all complaints of such boys as already have, or who shall at any time hereafter voluntarily put themselves apprentices to such trade of a chimney-sweeper, and also all complaints of masters or mistresses, against such apprentice and apprentices.

Not more than six apprentices at the same time. 305. By s. 7. no person exercising the trade of a chimney-sweeper shall employ more than six apprentices at the same time; and the name of every person taking an apprentice as aforesaid, and also the place of his or her abode shall be marked upon a brass plate, to be affixed in front of a leathern cap, which every master or mistress shall provide for each such apprentice, and which he shall wear when out upon his duty; and every master or mistress shall forfeit for every apprentice so employed beyond the number limited by this act, or for neglecting to provide each such apprentice with such leathern cap, and brass plate, any sum not exceeding the sum of ten pounds, nor less than five pounds.

Penalty on master for breach of any covenant in the indenture. 306. By s. 8. if any such master or mistress shall misuse or evil treat his or her apprentice, or the said apprentice shall have any just cause to complain of the forfeiture or breach of any of the covenants contained in such indenture, such master or mistress shall forfeit and pay for every such offence, any sum not exceeding ten pounds, nor less than five pounds.

Boys not to be let out to hire, nor to call the streets. 307. By s. 9. no person exercising the trade of a chimney-sweeper shall let out to hire, or lend by the day or otherwise, to any other person for the purpose of sweeping chimneys, any boy bound apprentice, under the direction of

before a certain time. this act, nor shall cause such boy to call the streets before seven of the clock in the morning, nor after twelve of the clock at noon, between *Michaelmas* and *Lady-day*, nor before five of the clock in the morning, nor after twelve of the clock at noon, between *Lady-day* and *Michaelmas*, on the like penalty.

Convictions for penalties and forfeitures to be made before me or more justices, &c. 308. By s. 10. all convictions for penalties and forfeitures by this act imposed, shall be made before one justice acting for the county, &c. where such offence was committed, either by confession of the offender, or upon the oath of one credible witness; and for that purpose it shall be lawful for such justice, upon complaint made to him, to summon the person so offending before him, to answer to such complaint, in such manner as he is authorized to do in any other matter cognizable before a magistrate.

Penalties how to be levied and applied.

309. And by s. 11. all such penalties and forfeitures and all costs and charges to be allowed by the authority of this act, shall be levied by distress, and sale of the goods and chattels of the offender, by warrant under the hand and seal of one such justice, and shall be paid, the one half to the informer, and the other half to the overseers of the poor of the parish or place, where the master or mistress of such apprentice shall dwell; and in case such distress cannot be found, such justice may, by warrant under his hand and seal, commit such offender to the common gaol or house of correction of the county, &c. where the offence shall be committed, or such order as aforesaid shall be made for any time not exceeding three months, unless the said penalty, forfeiture, costs, or charges, shall respectively be sooner paid.

310. By s. 12. no such warrant of distress shall be issued until six days after the offender shall have been convicted, and an order made and served upon him or her for payment thereof.

Distress not unlawful for want of form, &c. 311. By s. 13. where any distress shall be made, by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same a trespasser on account of any want of form in any proceedings relating thereto; nor shall the party distraining be deemed a trespasser, *ab initio*, on account of any irregularity which shall be afterwards done by him, but the person aggrieved by such irregularity may recover a full satisfaction for the special damage in an action on the case.

Plaintiff not to recover for any irregularity, &c. 312. By s. 14. no plaintiff shall recover in any action for any such wrongful proceedings, if tender of sufficient amends shall be made by the party who shall have committed any such wrongful proceedings before such action brought; and in case no such tender shall have been made, the defendant in any such action, by leave of the court where such action shall depend, may at any time before issue joined, pay into court such sum of money as he shall see fit.

313. By s. 15. where any oath is hereby required, and directed to be taken, the justice of the county, &c. where the offence shall be committed, shall administer the same.

Appeal. 314. By s. 16. if any person shall think himself or herself aggrieved by any thing done by any justice, in pursuance of this act, he or she may appeal to the justices of the peace, at the next general or quarter-sessions of the peace to be holden for

the county, &c. wherein the cause of such complaint shall arise, having first entered into a recognizance, with sufficient surety, before such justices, to abide by the order that shall be made on such appeal; and also giving to the justice, by whose act such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall have arisen.

XII. *Of Apprentices in Cotton and Woollen Mills.*

315. By 42 Geo. 3. c. 73. s. 1. it is enacted, That all such mills and factories within *Great Britain and Ireland*, wherein three or more apprentices, or twenty or more other persons, shall at any time be employed, shall be subject to the several rules and regulations contained in this act.

316. By s. 2. every room in or belonging to any such mill
Rooms to be or factory, shall, twice at least in every year, be well and
washed, &c. sufficiently washed with quick lime and water, over every part of the walls and cieling thereof: and due care shall be paid by the master or mistress of such mills or factories, to provide a sufficient number of windows and openings in such rooms, to insure a proper supply of fresh air in and through the same.

317. By s. 3. such master or mistress shall constantly
Apprentices' supply every apprentice, during the term of his or her ap-
clothing, &c. prenticeship with two complete suits of cloathing, with suitable linen, stockings, hats, and shoes; one new complete suit being delivered to such apprentice, once at least in every year.

318. By s. 4. no apprentice shall be employed or com-
Time of work- pelled to work more than twelve hours in any one day,
ing. (reckoning from six of the clock in the morning to nine of the clock at night, exclusive of the time that may be occupied by such apprentice in eating the necessary meals: provided always, that no apprentice shall be employed, or compelled to work upon any occasion whatever, between the hours of nine of the clock at night, and six of the clock in the morning.

319. By s. 6. every such apprentice shall be instructed,
Instruction of in some part of every working day, for the first four
apprentices on years at least of his or her apprenticeship, in the usual
working days. hours of work, in reading, writing, and arithmetick, or either of them, according to the age and abilities of such apprentice, by some proper person, to be provided and paid by the master or mistress of such apprentice, in some room or place in such mill or factory, to be set apart for that purpose; and the time hereby directed to be allotted for such instruction, as aforesaid, shall be deemed and taken on all occasions as part of the respective periods limited by this act during which any such apprentice shall be employed or compelled to work.

320. By s. 7. the room or apartment in which any
Apartments of male apprentice shall sleep, shall be entirely separate
male and female and distinct from the room or apartment in which any
apprentices to be female apprentice shall sleep; and not more than two
kept distinct, &c. apprentices shall in any case sleep in the same bed.

321. By s. 8. every apprentice, or (in case the apprentices shall attend in classes,) every such class shall, for the space of one hour at least

Instruction of apprentices on Sundays.

every *Sunday*, be instructed and examined in the principles of the christian religion, by some proper person to be provided and paid by the master or mistress of such apprentice; and in *England and Wales*, in case the parents of such apprentice shall be members of the church of *England*, then such apprentice shall be taken, once at least in every year during the term of his or her apprenticeship, to be examined by the rector, vicar, or curate of the parish in which such mill or factory shall be situated; and shall also after such apprentice shall have attained the age of fourteen years, and before attaining the age of eighteen years, be duly instructed and prepared for confirmation, and be brought or sent to the bishop of the diocese to be confirmed, in case any confirmation shall, during such period, take place in or for the said parish; and in *Scotland*, where the parents of such apprentice shall be members of the established church, such apprentice shall be taken, once at least in every year during the term of his or her apprenticeship, to be examined by the minister of the parish; and shall after such apprentice shall have attained the age of fourteen years, and before attaining the age of eighteen years, to be carried to the parish-church to receive the sacrament of the Lord's Supper, as the same is administered in churches in *Scotland*, and such master or mistress shall send all his or her apprentices under the care of some proper person, once in a month at least, to attend during divine service in the church of the parish or place in which the mill or factory shall be situated, or in some other convenient church or chapel where service shall be performed according to the rites of the church of *England*, or according to the established religion in *Scotland*, as the case may be, or in some licensed place of divine worship; and in case the apprentices of any such master or mistress cannot conveniently attend such church or chapel every *Sunday*, the master or mistress, either by themselves, or some proper person, shall cause divine service to be performed in some convenient room or place in or adjoining to the mill or factory, once at least every *Sunday*, that such apprentices shall not be able to attend divine service at such church or chapel; and such master or mistress is hereby strictly enjoined, and required to take due care that all his or her apprentices regularly attend divine service, according to the directions of this act.

Justices shall appoint visitors of such mills or factories.

322. By s. 9. the justices of the peace for every county, stewardry, riding, division, or place, in which any such mill or factory shall be situated, shall, at the *Midsummer* sessions of the peace to be holden immediately after the passing of this act for such county, stewardry, riding, division, or place, and afterwards yearly at their annual *Midsummer* sessions of the peace, appoint two persons, not interested in, or in any way connected with, any such mills or factories, to be visitors of such mills or factories in such county, stewardry, riding, division, or place; one of whom shall be a justice of peace for such county, stewardry, riding, division, or place, and the other shall be a clergyman of the established church of *England* or *Scotland*, as the case may be; and in case it shall be found inconvenient to appoint one such justice and one such clergyman as aforesaid, such justices may appoint two such justices or two such clergymen; and the said visitors, or either of them, shall have full power and authority, from time to time throughout the year, to enter into and inspect any such mill or factory, at any time of the day, or during the

hours of employment, as they shall think fit; and such visitors report from time to time in writing, to the quarter-sessions of the the state and condition of such mills and factories, and of the app therein, and whether the same are or are not conducted and regul cording to the directions of this act, and the laws of the realm; a report shall be entered by the clerk of the peace among the record session in a book kept for that purpose: provided always, that there shall be six or more such mills or factories within any or county, riding, division, or place, then such justices may divi county, riding, division, or place, into two or more districts or par to appoint two such visitors as aforesaid for each of such districts o

In case of infectious disorders prevailing.

323. By s. 10. in case the said visitors or any of the find that any infectious disorder appears to prevail mill or factory as aforesaid, it shall be lawful for t either of them to require the master or mistress of a mill or factory to call in forthwith some physic other competent medical person, for the purpose of ascertaining ture and probable effects of such disorder, and for applying such r and recommending such regulations as the said physician, or othe petent medical person, shall think most proper for preventing the ing of the infection and for restoring the health of the sick; and th physician, or other competent medical person, shall report to suctors, or either of them, as often as they shall be required so to d opinion in writing of the nature, progress, and present state of t order, together with its probable effects; and that any expenses in consequence of the provisions aforesaid for medical assistance be discharged by the master or mistress of such mill or factory.

Penalty for obstructing visitors.

than 5*l*.

324. By s. 11. if any person shall oppose or mole of the said visitors in the execution of the powers in to them by this act, every such person shall for such offence forfeit any sum not exceeding 10*l*. n

Copies of this act to be affixed in such mills or factories.

325. By s. 12. the master or mistress of every su or factory shall cause printed or written copies of t to be hung up and affixed in two or more conspicuous in such mill or factory, and shall cause the same to l stantly kept and renewed, so that they may at all ti legible and accessible to all persons employed therein.

Penalty on masters of offending against this act.

326. By s. 13. every master or mistress of any su or factory, who shall offend against any of the pr of this act, shall, for such offence (except where wise directed), forfeit not more than 5*l*. nor less th at the discretion of the justices before whom such c shall be convicted as after mentioned; one half to the informer, s other half to the overseers of the poor in *England and Ireland*, the minister and elders in *Scotland*, of the parish or place where s fence shall be committed, to be by them applied in aid of the poor- *England and Ireland*, and for the benefit of the poor in *Scotland*, of s parish or place; provided always, that all informations for offences this act shall be laid within one calendar month after the offence committed.

327. By s. 14. every such master or mistress shall, at the Epiphany sessions in every year, make, or cause to be made, an entry in a book to be kept for that purpose by the clerk of the peace of the county, &c. where any mill or factory shall be situate, of every such mill or factory occupied by him or her wherein three or more apprentices, or twenty or more other persons shall be employed; and the said clerk of the peace shall receive for every such entry the sum of 2s. and no more.

328. By s. 15. all offences for which any penalty is imposed under this act, shall and may be heard before any two or more justices of the peace, acting in or for the place where the offence shall be committed; and all penalties and forfeitures levied by distress and sale of the offender's goods and chattels, by or under the hand and seal of any two justices of the peace acting in or for the county, &c. where such offence shall be committed, rendering such justice (if any) to the party offending; and which warrant such justice is required to grant, upon conviction of the offender, either by jury, or upon the oath of one or more credible witness or witnesses (such justices are hereby empowered to administer); and if such distress cannot be found, and such penalties and costs shall forthwith paid, such justices may, by warrant under their hands and seals, commit such offender to the common gaol or house of correction of the county, &c. where the offence shall be committed, for any term not exceeding two calendar months, unless the said penalty, &c. respectively be sooner paid and satisfied: provided, that no warrant of distress shall be issued for levying any such penalty, &c. until twelve months after the offender shall have been convicted, and an order made in writing by or for her for payment thereof; and no such conviction shall be valid unless by certiorari or bill of advocation into any court whatsoever.

329. By s. 16. every such conviction before such justices of the County of) BE it remembered, That on the day of to wit, { of in the year A. B. was, the complaint of C. D., convicted before of the justices of the peace for the said county of , [or, for , of or in the said county of , as the case shall happen to be], in pursuance of an act in the forty-second year of the reign of his Majesty King George the third, for [or, as the case may be]. Given under our hands and seals, this day and year above written.

Every such conviction shall be certified to the next general quarter-sessions, to be filed amongst the records of the county, riding, or division.

330. By 59 Geo.3. c. 66. it is enacted, That no child shall be employed in any description of work for the spinning of cotton-wool into yarn, or in any previous preparation of such wool, until he or she shall have attained the full age of twelve years.

331. By s. 2. no person being under the age of sixteen years shall be employed in any description of work whatsoever, in spinning cotton-wool into yarn, or the previous preparation of such wool, or in the cleaning or repairing of any such manufactory or building, or any mill-work or ma-

chinery therein, for more than twelve hours in any one day, exclusive of the necessary time for meals; such twelve hours to be between the hours of five o'clock in the morning and nine o'clock in the evening.

332. By s. 3. there shall be allowed to every such person in the course of every day not less than one full hour for dinner, such hour for dinner to be between the hours of eleven o'clock in the forenoon and two o'clock in the afternoon.

Time to be made up by accidental intermission at the rate of an additional hour per day.

333. By s. 4. if at any time, in any such mill, manufactory, or buildings, as are situated upon streams of water, time shall be lost in consequence of the want of a due supply or of an excess of water, then, and in every such case, and so often as the same shall happen, it shall be lawful for the proprietors of any such mill, manufactory, or building, to extend the before-mentioned time of daily labour after the rate of one additional hour per day, until such lost time shall have been made good, and no longer.

Cleaning of the ceilings, &c.

334. By s. 5. the ceilings and interior walls of every such mill, manufactory, or building, shall be washed with quick lime and water twice in every year.

Publication of this act in every cotton-mill.

335. By s. 6. in a conspicuous part of any such mill, manufactory, or building, a copy of this act, or a full and true abstract of the regulations provided hereby, shall be hung up, affixed, and signed by the proprietors, manager, or overseer of such mill, manufactory, or building, and such

copy or abstract shall be kept and renewed, so that the same shall be at all times legible.

336. The 7th section gives a penalty not exceeding 20*l.* nor less than 10*l.* at the discretion of the justices before whom the offender may be convicted, against any master or mistress offending against the provisions of this act, one half to the informer, the other to the overseers of the poor in *England*, churchwardens in *Ireland*, and the ministers and elders of the church in *Scotland*, for the benefit of the poor of such parish in which the offence is committed: all penalties to be levied within three months, according to the provisions of the 48 Geo. 3. c. 73.

In case of mills being destroyed, persons belonging to them may be employed by night in other mills.

337. By 60 Geo. 3. c. 5. on the event of one or more mills being suddenly destroyed by fire or other accident, the proprietors thereof possessing other mills which are kept at work during the day, shall, for 18 months from the day on which any such fire or other accident shall happen, be allowed to employ the persons who were previously at work on the mills so destroyed, and employ them in the night-time in any other mill or mills for any period not exceeding ten hours in any one night.

338. By s. 2. the hours between which dinner shall be had are altered to eleven and four.

339. By s. 3. this act is declared to be a public act.

BASTARDS.

- I. WHO SHALL BE DEEMED BASTARDS.
 - II. OF THE AUTHORITY OF THE PARISH OFFICERS
AND THE CUSTODY OF THE CHILD.
 - III. OF THE AUTHORITY OF THE JUSTICES IN AND
OUT OF SESSIONS.
 - IV. COMPLAINT, SUMMONS, AND EXAMINATION.
 - V. BOND OF INDEMNITY.
 - VI. FORM OF THE ORDER.
 - VII. APPEAL AND CERTIORARI.
 - VIII. BASTARDS BORN IN HOSPITALS, &c.
-

I. Who shall be deemed Bastards.

A bastard is one that is not only *begotten* but *born* out of law-
trimony. 1 *Bl. Com.* 414.

And if born so long after the death of the husband, that by the
course of gestation, such child could not be begotten by him,
bastard. *Radwell's case*, *Co. Litt.* i. 450. 123 b. See also *Har-*
's note.

The usual time for a woman to go with child is forty weeks,
the time of gestation may be accelerated or retarded by ac-
tual causes, of which the law will take notice: thus a child
forty weeks and nine days after the death of the husband, has
held legitimate. *Alsop v. Bowtrell*, *Cro. Jac.* 541. i. 451.

If a man die, and his widow marry so soon afterwards, that a
child born during the second coverture may be the child of either
and, such child is legitimate; and on coming of age, may
choose which of the fathers he pleases. *Year-Book*, 21 *Edw. 3.* *pl.*
i. 451.

Children born during a divorce *a vinculo matrimonii* are bas-
tards; and during a separation also, if non-access be proved, 1 *Bl.*
n. 457. i. 457.

So also if children be born during a divorce *à mensâ et thoro*,
the presumption is, that they are bastards, unless the contrary be
shown. *St. George's v. St. Margaret's*, *Salk.* 123. i. 452.

7. But though a man be divorced from one woman *propter*

perpetuam generandi impotentiam, yet if he marry again, and children be born during such second marriage, the issue are lawful. *Burie's case*, 5 Co. 98. i. 451. note (a).

8. The child of a *feme covert*, conceived and born while the husband is *extra quatuor maria*, is a bastard. *Rex v. Alberton. Lord Raymond*, 45. i. 452.

9 But it has been said, that if the husband were here at all during the nine months, the child would be legitimate. *Rex v. Murray, Salk*. 122. i. 452.

10. It seems, however, now settled that the doctrine of living within the four seas is exploded, and it was agreed by the court and counsel in one case, that the jury were at liberty to consider generally the fact of non-access in determining a question of legitimacy. *Pendrel v. Pendrel, Str.* 925. i. 454.

11. But the fact of non-access of the husband needs not to be proved during the whole period of the wife's pregnancy, and it is sufficient if the circumstances of the case shew a natural impossibility that the husband should be the father: thus the child of a woman, whose husband was proved not to have had access to her till a fortnight before her delivery, was held to be illegitimate. *Rex v. Luffe*, 8 E. R. 193.

12. The same where an infirm bed-ridden man was married to a woman who was brought to bed twelve weeks after the marriage. *Foxcroft's case, Rol. Abr.* 359. i. 451.

13. In one case it was said that the impossibility, not the improbability of access must in all cases be proved. *Lomax v. Holmden, Str.* 940. i. 454.

14. And in another case that, where the husband and wife are not proved to be impotent, and have had opportunity of access to each other during the period in which a child could be begotten and born in the course of nature, the presumption of legitimacy arising from the birth of the child during wedlock, may be rebutted by circumstances inducing a contrary presumption: and the fact of non-access (that is the non-existence of sexual intercourse), as well as the fact of impotency may always be lawfully proved by means of such legal evidence as is strictly admissible in every other case where a physical fact is to be proved. See *Phil. Ev.* 112. *Banbury case*, 2. Sel. N. P. 709.

15. The court, however, have since held that there is no necessity to prove the impossibility of access, where the other circumstances of the case tend strongly to repel the presumption of its

aving taken place. *Goodright ex dem. Thompson v. Saul*, 4 T. R. 56. See *Phil. Ev.* 113.

16. Children born under a second supposed marriage, during the lifetime of the lawful husband, are bastards, if it appear that he had no access. *Res v. St. Bride's, Str.* 51. i. 453.

17. But the mere fact of criminal conversation is not of itself, however clearly proved, insufficient to bastardize the issue. *Res v. Browne, Str.* 811. i. 453. See further title *Evidence*.

I. Of the authority of the Parish Officers and herein of the custody of the Child.

18. The place of birth of a bastard child being *prima facie* its place of legal settlement, the parish officers are not only authorized but bound to provide for it, unless such birth in the parish were procured by fraud, and even then they are bound to take care of it until removed to the place of its legal settlement. *Twining v. Tewkesbury, 2 Bulstr.* 349. i. 463.

19. And where a bastard child is born in any parish, for whose sustenance the parents neglect to provide, the parish officers are obliged to do it without any order from the justices. *Hayes v. Bryant, H. Blacks.* 253. i. 470*.

20. It seems that if the putative father of a bastard undertake to maintain it, the parish officers cannot contravene such disposition. *Richards v. Salmon, 2 Saund.* 83. i. 464.

21. But where the putative father agrees to indemnify the parish, the parish officers may demand security to any extent, however large, which they think proper, since this is no hardship upon such father, it being optional with him either to give the security demanded, or enter into a recognizance to abide the judgment of the sessions. *Dickenson v. Brown, Peake N. P. C.* 307. i. 490.

22. And although neither the putative father nor the mother have the legal guardianship of a bastard child, yet if the putative father take the child and provide for it, the parish officers cannot call upon him for maintenance while in his keeping, or order him to deliver it to the mother. *Felton v. Wenman, i.* 478.

23. An information on 4 & 5 *Phil. & Mary*, c. 8. will lie for taking a bastard child out of the care and custody of its putative father. *Res v. Cornfort, i.* 465.

24. And even if the parish officers, from the neglect of the parents, have taken a bastard child into their keeping, yet the putative fa-

* No order of maintenance can be made in the case of a bastard child. *Bedworth v. Dumpley, Salk.* 123. i. 371.

ther may take it from the parish, and maintain it himself. *Newlen v. Osman*, i. 466. *Foster, J. dubitante.*

25. But until such child attain the age of seven years, the mother is entitled to the custody of it for nurture; and therefore if a bastard be settled in a different parish from its mother, the mother shall have the care of it in the parish in which she is settled, and the parish in which the bastard is settled shall pay the expence of its nurture. *Rex v. Hemlington*, i. 468.

26. And if the putative father of a bastard obtain the possession of it from the mother by fraud, the court will order it to be restored to her. *Rex v. Soper*, 5 T. R. 460. i. 468. n.

27. Therefore where two persons obtained by stratagem a bastard child from the quiet possession, care, and protection of its mother, but soon afterwards returned it to her, from whom it was again taken by them by force; the Court of King's Bench granted a *habeas corpus* and restored the child to its mother, the child being within the age of nurture. *Rex v. Hopkins*, 7 East, 379. i. 732.

28. If however the putative father have the custody of the child by fair means, the court, except upon special grounds, will not, perhaps, take it away from him. *Rex v. Mosely*, 5 E. R. 244. n.

29. But the court ordered an infant illegitimate child to be delivered to the mother where the father, having gone abroad, had intrusted a friend with the superintendence of the child, although it appeared upon the affidavits that this person wished the infant to be placed where the mother could have access to it, and also that the father was better able to maintain the child than the mother. *Ex-parte Knec*, 1 Bos. & Pull. N. R. 149. cited in *notis.* i. 468.

30. See *Holland v. Malkin and Another*, 2 Wils. 126. i. 488. where the chief justice declines giving any opinion as to whether the father has any power of a child who is *nullius filius*; and cites *Grotius* as stating truly that the mother is the only certain parent.

31. See *Strangeways v. Robinson*, 4 Taunt. 498. where Sir *Jama. Mansfield* seems to incline against any putative father, in whatever circumstances of poverty, having the power to call for the custody of the child when past the age of seven years.

32. When a woman, having three bastard children, relieved by, and dwelling in the parish of *S.*, married and went to live with her husband in *B.* the place of his settlement, this was held to be no discharge of the liability of the parish of *S.* to maintain the children. *Shermanbury v. Bolney*, *Carth.* 279. i. 464.

33. But *Qu.* If the children had been nurse children, the court

ted to have said "The marriage of the mother into *B.* shall tie the children there, unless they were nurse children, for must go with their mother. *Ibid.*

34. By 13 & 14 *Car.* 2. c. 12. s. 19. the churchwardens and overseers for the poor of the parish where any bastard child shall be born, may take so much of the goods and chattels, and receive so much of the annual rents or profits of the lands of the putative father or lewd mother, as shall be ordered by any two justices of peace as aforesaid, for the discharge of the parish, to be confirmed at the sessions, bringing up and providing for such bastard child: and the sessions make an order for the churchwardens and overseers for the poor parish to dispose of the goods by sale or otherwise, or so much as, for the purposes aforesaid, as the Court shall think fit, and to the rents and profits, or so much of them as shall be ordered by the as aforesaid, of his or her lands.

I. Of the Authority of the Justices in and out of Sessions.

By 18 *Eliz.* c. 3. s. 2. two justices of the peace (whereof one to be quorum, in or next unto the limits* where the parish-church in which parish such bastard shall be born), upon examination cause and circumstance, shall and may, take order, as well for punishment of the mother and reputed father of such bastard child, for the better relief of every such parish in part or in all. And the said justices shall and may likewise, take order for the keeping of every such bastard child, by charging such mother or reputed father with the payment of money weekly, or other sustentation for the relief of such child in such wise as they shall think meet.

36. And if, after the same order by them subscribed under their hands, any the said persons, viz. mother or reputed father, upon notice thereof, shall not for their part perform the said order, then every such party so making default shall be committed to the common gaol, except he, she, or they shall put in sufficient surety to perform the said order, or else personally to appear at the next general sessions of the peace to be holden in that county such order shall be taken; and also to abide such order as the justices of the peace then and there shall take in that behalf, and at the said sessions the said justices shall take no other order, to abide and perform the order before made.

37. By 3 *Car.* 1. c. 4. s. 15. so much of the 18 *Eliz.* c. 2. as concerneth bastards begotten out of lawful matrimony is continued; with this, that all justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the said statute, that by justices of the peace in the several counties, are by the said statute limited to be done.

* These words are only directory. See *Rex v. Baker*, i. 476.

The mother of a bastard child likely to become chargeable, may apply to the justices of the parish and swear it to any person.

And the justice may apply to such person, or apprehend him by his warrant;

and commit him to prison unless he gives security.

38. By 6 Geo. 2. c. 31. if any single woman shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any parish, or extraparochial place, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extraparochial place; and shall, in either of such cases, in an examination to be taken in writing, upon oath, before any one justice of the peace of any county, riding, division, city, liberty, or town-corporate, wherein such parish or place shall lie, charge any person with having gotten her with child, such justice may upon application made to him by the overseers of the poor of such parish, or by any of them, or by any substantial householder of such extraparochial place issue out his warrant for the immediate apprehending such person, and for bringing him before such justice or before any other of his Majesty's justices of the peace of such county, &c., and the justice before whom such person shall be brought, is hereby required to commit the person so charged to the common gaol, or house of correction of such county &c., unless he shall give security to indemnify such parish or place, or shall enter into a recognizance, with sufficient surety, to appear at the next general quarter sessions, or general sessions of the peace, to be holden for such county &c. and to perform such order or orders as shall be made in pursuance of the 18 Eliz. c. 3. concerning bastards.

39. By this statute it seems that the same power is given where the child is born in an extraparochial place as in a parish, but See *Rex v. Baker*, i. 476.

But such person, on the woman's miscarriage, &c. shall be discharged.

40. By s. 2. if the woman so charging any person as aforesaid shall happen to die, or be married, before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination, then, such person shall be discharged from his recognizance at the next general quarter sessions or general sessions of the peace, to be holden for such county, &c. or immediately released out of custody by warrant under the hand and seal of any one justice residing in or near the limits where such parish or place shall lie.

41. By s. 3. upon application made by any person who shall be committed to any gaol or house of correction by virtue of this act, or by any person on his behalf, to any justice residing in or near the limits where such parish or place shall lie, such justice is required to summon the overseer or overseers of the poor of such parish, or one or more of the substantial householders of such extraparochial place, to appear before him at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made in pursuance of the said act of the 18 Eliz. c. 3. within six weeks after such woman

The justices, on prisoner's request, may summon the overseers &c. and if no order be made within six weeks after the woman's delivery, prisoner

to be set at liberty. shall have been delivered, such justice shall discharge him from his imprisonment in such gaol or house of correction.

The woman not to be examined respecting her pregnancy till one month after her delivery. 42. But by s. 4. it shall not be lawful for any justice or justices of the peace to send for any woman whatsoever before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy, or supposed pregnancy, or to compel any woman before she should be delivered to answer to any questions relating to her pregnancy.

43. But now by 49 Geo. 3. c. 68. s. 6. so much of the last cited act as authorises the commitment of the reputed father before the woman's delivery, is repealed.

44. By s. 2. giving the power of apprehending the putative father and binding him over to abide the decision of the sessions, (as by 6 Geo. 2. c. 51.) it is provided, that in case one such justice, as mentioned in this act, shall have certified in writing under his hand to such general quarter sessions or general sessions of the peace, that it has been proved before him upon the oath of one credible witness, that such single woman had not been then delivered, or had been delivered within one month only previous to the day on which such general quarter sessions or general sessions of the peace shall be holden, or in case two justices of the peace of such county, riding, division, city, liberty, or town corporate, shall have certified in writing under their hands to the next, or where such woman shall not have been delivered as aforesaid, then to the immediate subsequent general quarter sessions or general sessions of the peace, that an order of filiation had been already made on the person so charged, or that such order was not then requisite to be made, on account of the birth of the child born a bastard, or for other like sufficient reason; in each of which cases firstly before mentioned, it shall be lawful for the justices assembled at such general quarter sessions or general sessions of the peace, to respice such recognizance to the then next general quarter sessions or general sessions of the peace to be holden for such county, riding, division, city, or town corporate, without requiring the personal attendance of the putative father so bound, or of that of his surety or sureties, and in either of the said two last mentioned cases it shall be lawful for the justices assembled as aforesaid wholly to discharge such recognizance.

45. The warrant for such commitment should be in the disjunctive, it seems. *Rex v. Eve, Show, 256. i. 471.*

46. It was held formerly that the justices could not commit a reputed father for disobeying an order of maintenance. *Smith's case i. 471.*

47. But by 49 Geo. 3. c. 68. s. 3. it is enacted, That if any reputed father or any mother of such bastard child or children, on whom any order of filiation or maintenance of such child or children, shall have been made by the court of quarter sessions, or which shall have been made by two justices of the peace and confirmed by the court of quarter sessions, or against which no appeal shall have been made to the court of quarter sessions, shall neglect or refuse to pay any sum or sums of money which he or

she shall have been ordered to pay towards the maintenance or other sustentation for the relief of any such bastard child or children by any such order, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, or town corporate in which such reputed father or such mother shall happen to be, and the said justice is hereby required upon complaint made to him by any one of the overseers of the poor of any parish, township, or place liable to the maintenance or support of such bastard child or children, or where such bastard child or children shall then be, and upon proof on oath of such order for the payment of such sum or sums of money being unpaid, and of a demand of such payment having been made, and a refusal to pay the same, or that such reputed father or such mother hath left his or her usual place of abode, and hath avoided a demand thereof being made by such overseer, to issue his warrant to apprehend such reputed father or such mother, and to bring him or her before such justice, or any other justice of the peace of the same county, riding, division, city, liberty, or town corporate, to answer such complaint; and if such reputed father or such mother shall not pay such sum or sums of money as shall appear to the said justice before whom such reputed father or such mother shall be brought to be due and unpaid, or shall not shew to such justice some reasonable and sufficient cause for not so doing, it shall be lawful for such justice, and the said justice is hereby required to commit such reputed father or such mother to the public house of correction, or common goal of the said county, to be there kept to hard labour for the space of three months, unless such reputed father or such mother, shall, before the expiration of the said three months, pay or cause to be paid to one of the overseers of the poor of the parish, township, or place on whose behalf such complaint as aforesaid was made, the said sum or sums of money so due and unpaid as aforesaid, and so from time to time, and as often as such reputed father or such mother shall, in manner aforesaid, neglect or refuse to pay any other sum or sums of money that shall afterwards become due by virtue of, and under such order after the expiration of, or discharge from any such former imprisonment as aforesaid.

48. In a late case it was contended that under the last mentioned section, it was the duty of the justice to issue his warrant to apprehend in the first instance without any summons; but the court said, that it was the general duty of magistrates in cases of this sort, where the complaint was merely for non-payment of money, to issue a summons previous to granting a warrant for the apprehension of the party, and that it required very strong words to take away the necessity of such summons, and that those used here were not strong enough for this purpose. *Rex v. Martyr and Another*, 15 E. R. 55.

49. In framing the commitment the words of the statute should be pursued, by which means the party committed has the option either to pay the money, or remain three months in prison and be thereby discharged from payment, and where a warrant was for the commitment of A. B. "until he should pay the sum due and legal or

customed fees, or until he should be discharged by due course of law," the court held it to be illegal and void, the magistrate having no authority to issue such a warrant. *Robson v. Spearman*. 3 B. & A. 93.

Reputed fathers of bastard children shall be chargeable with the expences incident to the birth with the costs of apprehending and securing of the order of filiation.

50. By 49 Geo. 3. c. 68. s. 1. every person who shall hereafter be adjudged to be the reputed father of any bastard child or children, shall be chargeable with and liable to the payment of all reasonable charges and expences incident to the birth of such bastard child or children, and also to the payment of the reasonable costs of apprehending and securing such reputed father, and also to the payment of the costs of the order of filiation, such costs of apprehending and securing such reputed father, and of the order of filiation, not to exceed the sum of ten pounds; and all such charges, expences, and costs, shall be duly and respectively ascertained on oath before the justices of the peace, or the court of quarter sessions making such order of filiation, which oath such justices or court are hereby respectively empowered to administer.

Expences and costs subject to the discretion and allowance of magistrates or court of quarter sessions, as the case may be.

51. By s. 4. provided that all such charges, expences, and costs shall be wholly subject to the discretion of the justices, or court of quarter sessions who shall make such order of filiation; and the justices or court of quarter sessions are hereby authorized, if they shall see fit, to allow and order payment of the whole or any part thereof: Provided that the costs of apprehending and securing the reputed father, and of the order of filiation, shall not in any case exceed the sum of 10*l.* and for securing the due payment of the same, after such allowance and order as aforesaid, all and every the powers, authorities, provisions,

clauses, matters, and things contained in the 18. *Eliz.* c. 3. shall be respectively observed in the execution of this act.

52. In order to come under the denomination of a bastard, the child must be born alive; and therefore no order of filiation, or for payment of expences can be made where the child is born dead. *Rex v. De Brouquens*. 14 *E. R.* 277.

53. The order of the justices is conclusive of the fact of bastardy until reversed. *Webb v. Cook*. i. 472.

54. The justices may make an order at any distance of time; and therefore where the reputed father ran away, and returned fourteen years after, and an order was made to fix the child on him, the order was held good. *Rex v. Miles*. i. 473.

55. The justices cannot order the churchwardens to seize so much of the defendant's goods as they, the churchwardens, shall think proper. *Rex v. Chaffey*. Lord Raymond, 858. i. 472.

56. Nor can they make an order that the defendant shall give

security for payment of the sum the justices have imposed for the maintenance of the child, where it does not appear that the defendant has disobeyed the order in point of payment; for by the 18 *Eliz. c. 3.* an order for security cannot be made till after contempt. *Ibid.*

57. The justices cannot punish a person for secreting a woman big with an illegitimate child, in order to keep her out of the way of giving evidence against the father; for the child may not after all be born illegitimate, and by the statute the woman is not to be compelled. *Rex v. Chandler. Str. 612. i. 473.*

58. The words "in or next the limits" in the statute are only directory, and justices, though not "in or next the limits," where the church of the parish is in which the child was born, may order a joint maintenance of several bastards, and that the father shall "pay the expence of the parish," without stating what those expences are: but neither the two justices nor the sessions can order costs to be taxed by the clerk of the peace. *Rex v. Skinn. i. 476.*

59. An order made by five justices on the complaint of a town, is good. *Rex v. Hatton. i. 495.*

60. Where an order of justices is discharged at sessions, two justices cannot make a fresh order on the same person. *Rex v. Tennant. Ld. Raym. 1423. i. 473.*

61. The justices cannot commit a person for refusing to discover the father of a bastard child. *Rex v. Southby. i. 477.*

62. But they may commit a woman unmarried at the time the bastard was born, for disobeying their order of maintenance although she be married at the time the warrant of committment is made. *Rex v. Ellen Taylor. Burr. 1679 i. 479. See Rex v. Ridge. i. 507.*

63. And this commitment may be either to the common gaol or the house of correction. *ibid.*

64. It is not necessary to summon the husband. *Ibid.*

65. By 7. *Jac. 1. c. 4. s. 7.* the justices might commit the mother of a bastard to the house of correction, for a year there to be punished, &c.; but by 50. *Geo. 3. c. 51. s. 1.* so much of the said act as relates to such commitment of women is repealed.

66. By 50. *Geo. 3. c. 51. s. 2.* in cases where a woman shall have a bastard child which may be chargeable to the parish, it shall be lawful for any two justices of the peace before whom such woman shall be brought, and they shall or may, at their discretion, commit such woman to the house of correction for the district or place, and there to be set on work for any time not exceeding twelve calendar months, nor less than six weeks.

67. By *s. 3.* any two justices of the peace, at any petty session for the division wherein the parish to which such bastard child may be

chargeable is situate, upon their own knowledge, or a certificate duly authenticated from the keeper of such house of correction, in which such woman shall have been confined for any space not less than six weeks, of the good behaviour of such woman during such her confinement, and of the reasonable expectation of her reformation, by warrant under their hands and seals, may order such woman to be immediately (or at the time to be appointed in such warrant) discharged and released from further confinement.

68. By s. 4. Nothing in this act contained shall extend to authorize any justices of the peace to commit any such woman to the house of correction, until she shall have been delivered for the space of one calendar month.

69. The justices may commit a soldier for disobeying an order of bastardy, since soldiers are not protected by the mutiny act from commitments for such offences. *Rex v. Archer*, 2 T. R. 273. i. 480.

70. And one justice may commit a soldier in actual service for want of sureties, under 6 Geo. 2. c. 31. on a charge of being the father of a bastard child. *Rex v. Bowen*, i. 481.

71. The sessions have an original jurisdiction in cases of bastardy. *Rex v. Greaves*, i. 509.

72. See also Slater's case, *acc.* i. 506.

73. After the sessions have made an order, the two justices cannot make an order in the same case. *Slater's case*, i. 506.

74. Nor if the sessions discharge the order of two justices. *Rex v. Tennant*, Str. 716. i. 511.

75. But the sessions may quash an order of bastardy made by two justices, and make an original order on another person. *Wood's case*, Bulstr. 355. i. 507.

76. And against such original order there is no appeal. *Pridgeon's case*, i. 506.

77. The sessions have no power to commit a party, against whom an order of filiation has been made by two justices, for not paying the money ordered by such justices, though such order be confirmed by the sessions on appeal. *Reg. v. West, Ld. Raym.* 1152. i. 472.

78. But in making an original order on the statute 3 Car. 1. c. 4. which is the statute that gives jurisdiction to the sessions in this case, they may commit as the two justices might have done on the 18 Eliz. c. 3. that is, unless the party put in security to perform the order, or to appear at the next sessions. *Rex v. Weston*, Salk. 122. i. 507. *Reg. v. West*, i. 472. *Semble S. C.*

79. The sessions cannot commit the reputed father, for not giving security to perform the order made by one justice. *Rex v. Price*, 6 T. R. 147. i. 510.

80. See also *Rex v. Fox*, i. 477.

81. The sessions cannot make an order fining a constable who has let the putative father escape. *Rex v. Ridge*, i. 507.

82. If the sessions confirm an order made by two justices, it is conclusive, and cannot be vacated at a subsequent sessions. *Rex v. Arundel*, i. 509.

83. By 5 Geo. 2. c. 19. upon all appeals against orders of justices, the sessions may cause any defects of form to be rectified and amended without any costs or charges to the parties, and proceed to hear and determine upon the merits of such orders, &c.

IV. Of the Complaint, Summons, and Examination.

84. An order of filiation, made on an examination by one justice only, is void, although in the ordering part of it, it be stated to have been made by two justices. *Rex v. Beard*, *Salk.* 470. i. 481.

85. The examination being a judicial act, it must be taken by the two justices in the presence of each other; but if both be present, it is good, though only one of them take the examination. *Rex v. West*, 6 *Mod.* 180. i. 482.

86. For separate examinations by different magistrates may produce different facts, and render it uncertain on which examination the adjudication proceeds; and there is no use in appointing two or more persons to exercise judicial powers, unless they are to act together. *Billings v. Prinn*, 2 *Bl. Rep.* 1017. i. 482.

87. It has been said that the presence of the putative father before the justices out of sessions is not necessary. *Rex v. Upton Gray*, *Cald.* 308. i. 482.

88. But it seems clear that he ought, at all events, to be summoned and have an opportunity of making his defence before the order of filiation is made. *Rex v. Cotton*, i. 486.

89. But the summons may be by a different justice from those who actually sign the order. *Rex v. Neal and Another*, i. 487.

90. And if he will not attend himself, having been summoned, the justices are not bound to hear any defence for him. *Ibid.*

91. An order of bastardy must be made on complaint of the parish where the child is born. *Rex v. Nottingham*, i. 482.

92. But it is said that the complaint may be made by other persons than the parish officers. *Rex v. Buckall*, *Barn.* 261. i. 482.

93. Thus an order was held good, although an objection was taken to it, as not being made upon the complaint of any parish or parish officers, but only of a town which, it was said, might include many parishes. *Hatton's case*, *Salk.* 477. i. 495.

94. And it was held, that an order might well be made upon the complaint of a person who was *de facto* guardian of the poor of a parish united with other parishes under 22 Geo. 3. c. 83. and who was received and acknowledged by the parish in that capacity, although not legally appointed under the statute. *Rex v. Fulham and Martyr*, 13 E. R. 55.

95. The examination of a pregnant woman, taken by a justice under the 6 Geo. 2. c. 31. is sufficient to enable the sessions to make an order of filiation on the putative father, though the woman be dead. *Rex v. Ravenstone*, 5 T. R. 373. i. 483.

96. But an order of bastardy cannot be made on an affidavit produced before the justice, it must be on the testimony of witnesses examined on oath. *Rex v. Colbert*, Comb. 69. i. 495.

V. Of the Bond or Agreement to indemnify.

97. By 54 Geo. 3. all securities given or received for indemnifying any district, parish, township, or hamlet, for the maintenance of any bastard child, or any expences in any way occasioned by such district, &c. by reason of the birth or support of any bastard child born within such district, &c. or chargeable thereto, are declared to be vested in the overseers of the poor of such district, &c. for the time being; and such overseers may sue for the same, as and by their description of overseers of such district, &c.; and such action so commenced by such overseers shall in no ways abate by reason of any change of overseers of such district, &c. pending the same, but shall be proceeded in by such overseers for the time being, as if no such change had taken place, any law, &c. notwithstanding.

98. In a recent case, where, to an action on a bond of indemnity brought by the overseers at the time it was made, the defendants pleaded that the plaintiffs were not overseers at the time of the commencement of the suit, the Court of Common Pleas held it to be quite clear that the overseers *for the time being* were alone entitled to sue. *Addy v. Worthy*, 3 Moore, 21.

99. In a case of an action, upon a bond to indemnify a parish, by the parish officers, it was objected that the plaintiffs or parishioners were not bound to maintain the paupers without a justice's order for that purpose; but *Wilson*, J. overruled the objection, and the Court subsequently concurred in his opinion. *Hays v. Bryant*, 1 H. Blackst. 253. i. 419.

100. But the payments, against which parish officers are indemnified by any bond to indemnify a parish, must be such as they are under a legal obligation to make, not merely voluntary payments. *Simpson v. Johnson*, Doug. 7.

101. Whatever kind of security the parish officers may think proper to take, the purpose of it is only to insure an indemnity to the parish; and where a person charged with being the father of a bastard gave three promissory notes, any one of which eventually turned out to exceed the actual expences incurred by the parish, to which amount the defendant made a tender (in an action upon the note,) the Court held that the parish officers were entitled to recover no more than would reimburse them the charges actually incurred. *Cole v. Gower*, 6 E. R. 110. i. 490. *Kirk v. Strickland*, Doug. 449.

102. Upon a subsequent occasion, Gibbs, C. J. expressed his clear opinion, that it was unlawful to undertake to give a sum *out and out*, in order to indemnify a parish, because it would create an interest in the death of the child. *Shutt v. Proctor*, 2 Marsh. 226.

103. Where the putative father gave a *voluntary* bond conditioned for the payment of a certain sum "every three months for so long and until a certain bastard child should be deemed capable of providing for herself," the court said they saw no reason why it should not have effect; that the parties here were not acting under the statute, and as if the bond had been given in order to relieve the party from commitment, and that they were not obliged to comply with its directions; and that there was nothing in the transaction contrary to the general policy of the law, which was the case in the instance of *Cole v. Gower*. With respect to the words "deemed capable;" by them the court said must be intended till the child should be so deemed by a jury. *Middleham v. Bellerby*, 1 M. & S. 310.

104. The Court of C. B. held, that a bond conditioned for the payment to overseers of a certain weekly sum, so long as a bastard child should continue chargeable, was not illegal or contrary to public policy. *Strangeways v. Robinson and Another*, 4 Taunt. 498.

105. The overseers, in case of the death of a child after a part only of certain money paid to them by the reputed father for its support, cannot retain the surplus in their hands, and if they refuse to refund it, the money may be recovered in an action against them. *Stainforth v. Staggs*, 1 Camp. 398. (n). See also *Wilde v. Griffin*, 5 Esp. 142. *Hodgson v. Williams*, 6 Esp. 29.

106. The parties receiving the money cannot discharge themselves by paying it over to their successors in office. *Townson v. Wilson*, 1 Camp. 396.

107. In no case can more than the whole penalty of the

bond be recovered by the overseers. *Brangwin v. Perrot*, 2 *Bl. Rep.* 1190. i. 489.

108. And the court will order satisfaction to be entered on the record, on the defendant's paying the penalty of the bond and the costs in such an action. *Wilde v. Clarkson*, 6 *T. R.* 303. See also *Shutt v. Proctor*, 2 *Marsh.* 226. where the court ordered proceedings to be staid in a similar case.

109. Where a bond was given to the reputed father of a bastard child to indemnify him as to the child generally, such bond was held to be forfeited where the father was called upon by the parish to maintain the child, although it was under the age of seven years, and the mother took it out of the keeping of the obligor. *Hulland v. Malkin and Another*, 2 *Wils.* 126. i. 488.

110. Where an action of assumpsit was brought upon an express promise by the putative father to pay for the maintenance of a bastard child, it was held, that evidence of such person not being the father of the child, was inadmissible; the jury, Lord Kenyon said, could not there try who was the father of the child, but must confine themselves to the contract; if the child were not the defendant's, he might relieve himself by applying to a magistrate for an order of filiation. *Shaw v. Whiteman, Peake*, *N. P. C.* 42.

VI. Of the form of the Order.

111. The order it seems, should not only state that the sum ordered is for the maintenance of a bastard child, but should expressly adjudge that such child was born in the parish for the relief of which the order is made. *Anonymous, Sty.* 368. i. 494. also, *Rex v. Cuddington.* i. 497.

112. For an order made thus: "We *A.* and *B.* two justices of the borough of *Lynn Regis*, residing within the limits where the parish church is, within which parish the child was born, do, &c." is insufficient, it only averring that the justices resided in the parish where the child was born, and not expressly adjudging that the child was born therein. *Rex v. Butcher, Str.* 437. i. 499.

113. So where it was alleged in the complaint only that the child was born in the parish. *Rex v. Godfrey. Lord Raymond*, 1363, i. 498.

114. So an order that *A. B.* the reputed father should pay such a sum to the churchwardens of the parish of *C.* without expressly adjudging that the child was born in the parish of *C.* was held bad; for the court will not allow inferences to give the justices jurisdiction. *Rex v. Childers*, i. 498.

115. So where the order adjudged *T. S. of Workstop*, to be the re

puted father of a bastard child, begotten upon *A. S.* of *Anton*, and that the said child was become chargeable and likely to continue so, it was quashed, because this was no adjudication that the child was born in the parish. *Rex v. Stanley*, i. 504.

116. For the birth of the child is the very foundation of the justices jurisdiction. *Rex v. Willey*, i. 495.

117. But, where an order stated that it appeared to the justices, on the oath of the mother, that she was delivered of the child in the parish of *N.* the court said they would understand by this, that the fact was sworn to by the mother before the justices, and that they found it to be true; and that there was no case where an order in this form was ever held to be bad : and they therefore overruled the objection that there was not a sufficient adjudication of the parish in which the child was born. *Rex v. Sweet*, 9. *E. R.* 25. *Supp.* 16.

118. And it has been held, that an order stating the child to have been baptized in the parish, might, by a reasonable construction, be taken to express the place of its birth, although only by way of recital. *Rex v. Moravia*, i. 500.

119. And where the order was expressed as follows :—"The order of us, *L.* and *D.* two justices, &c. residing, &c. concerning a male bastard child of *E. D.* born in the said parish of *H.* &c." This was considered sufficient, for it was said that although it must appear where the child was born, yet if this appeared in any part of the order it was enough. *Rex v. Fox*, i. 501.

120. The order should state that it is made on the complaint of that parish where the child was born. *Rex v. Nottingham*. i. 482.

121. There must be an express adjudication that the person, against whom the charge is made, is the reputed father. *Rex v. Pitts. Doug.* 662. i. 503.

122. An order of bastardy, stating, "whereas it hath appeared to us, &c." without an express adjudication that the person charged was the putative father, was held to be insufficient, and was quashed. *Ibid.*

123. It should appear upon the face of the order, that the party charged was summoned, it is not enough to state that he had notice to appear, and this whether made by two justices, or at the sessions. *Rex v. Gleg.* i. 485.; but see *Rex v. Hawkins*, *ibid.* where it is said that this is only necessary when the order is made at the sessions.

124. See also *Rex v. Cotton*, i. 406. *Rex v. Neal*, i. 487. and *Rex v. Clayton*, *ibid.*

125. The order should set forth that the child is chargeable, or likely to become so. But it is enough to state the latter, without shewing that it actually is chargeable. See *Comb.* 39. *Rex v. Matthews, Salk.* 475. *i.* 496. *Rex v. Hartington, Upper Quarter, 4 M. & S.* 559.

126. The order should state the sex and the name of the bastard. *Rex v. England, Str.* 503. *i.* 497.

127. An order describing the child as chargeable to a hamlet, unless it stated it to be a hamlet maintaining its own poor, is bad. *Rex v. Mitford, i.* 498.

128. An order of maintenance to pay two-pence a week is bad, in respect to the smallness of the sum. *Rex v. Parkase, Sid.* 463. *i.* 494.

129. An order directing the reputed father to maintain the child, by paying so much a week until it be twelve years of age, is bad; it ought to have been, "so long as it shall be chargeable to the parish." *Burwell's Case, Vent.* 48. *i.* 494.

130. For the justices have no authority but to indemnify the parish, by obliging the reputed father to maintain the child so long as it shall be chargeable to the parish. *Rex v. Barebaker, Salk.* 478. *i.* 495.

131. See also *Smith's Case, i.* 497.

132. But an order for the maintenance of the child needs not be "till it can get its own living." *Rex v. Johnson, Comb.* 69. *i.* 495.

133. And an order to pay "seven-shillings a week until the child shall be able to get its living by working," was held to be bad. *Rex v. Sharman, Vent.* 210. *i.* 495.

134. An order of bastardy to pay so much weekly until the child be nine years old, if it should so long live, was held to be good, because it could not be intended able to provide for itself sooner. *Rex v. Street, Str.* 788. *i.* 498.

135. An order directing the reputed father to pay four shillings to the midwife, without stating that the parish had procured her, or were at any charge with respect to her, is bad. *ibid.*

136. An order directing the reputed father to maintain the child "for the relief of the governors and guardians of the poor of Colchester," was quashed, because it did not state that it was for the relief of the poor. *Rex v. Howlett, i.* 500.

137. So an order of bastardy directing the payment of a sum in gross, for the charges the parish had been at, without shewing how or for what, is bad. *Rex v. Colbert, i.* 495.

138. But an order to pay forty shillings for money disbursed, without saying by whom, is good; for it is necessarily intended by the churchwardens. *Reg. v. Smith. i. 497.*

139. So an order on the father to pay fifty shillings for the midwife and other charges, without shewing that the money had been expended by the parish, is good. *Rex v. Fox. i. 502. See also Rex v. Huntington, 4 M. & S. 559.*

140. An order that the reputed father shall pay so much weekly "to the overseers of the poor," is good. *Rex v. Weston, Salk. 122. i. 496.*

141. So also, an order directing the payment on a particular day, weekly, is good. *Ibid.*

142. And when no particular day is mentioned, but the order directs generally that the money shall be paid weekly, the money is due at the beginning of the week. *Rex v. Fearfully, 1 T. R. 316. i. 418.*

143. So an order to pay nine pounds *in gross*, for maintenance and other incident charges, immediately upon sight of the order, and after that so much weekly, is good. *Reg. v. Odam. i. 497.*

144. But if it had been for maintenance only, it would have been too general. *Rex v. Gravesend. i. 500.*

145. So also an adjudication that the child was baptized in the parish, and ordering that thirty-six pounds be paid, "part whereof has been already expended for the maintenance of the child and other incidental charges and expences," has been held good. *Rex v. Moravia. i. 500.*

146. But the reputed father cannot be ordered to pay a gross sum at a future day for the purpose of binding the child out apprentice. *Rex v. Willey. i. 499.*

147. An order is bad unless it appear to be made on the examination of witnesses; and therefore an order made on an affidavit was quashed. *Rex v. Colbert. i. 495.*

148. And the witnesses must have been examined on oath. *Rex v. Hexham. i. 498.*

149. An order of bastardy made by two justices, saying, "We doth adjudge, &c." is bad. *Rex v. Weston. i. 496.*

150. "To wit—Liberty of the Tower Hamlets, London," in an order of bastardy is sufficient without saying in what county. *Rex v. Messenger, i. 499.*

VII. Of the Appeal and quashing the order and the Certiorari.

151. For appeal to the sessions, see title Appeal, Div. VI.

152. An order of bastardy may be removed at once by certiorari into the Court of King's Bench, without an appeal having been previously lodged at the sessions within time. *Rex v. Stanley, Cald.* 172. i. 512.

153. Where an order of sessions, continuing a soldier in custody who had been committed on a charge of bastardy, had been removed by certiorari, the court expressed a strong opinion that the writ ought not to have issued, but that the proper mode of obtaining relief in such a case was by *habeas corpus*. The case of the *King v. Archer*, 2. 7 R. 273. i. 480. was alluded to as a similar instance in which a certiorari had improperly issued. *Rex v. Bowen*, 5 T. R. 156. i. 514.

154. It seems that the putative father should be present in court when an order of sessions is quashed. *Rex v. Matthews, Salk.* 475. i. 496. *Rex v. Gibson*, Bl. Rep. 198. i. 511.

VIII. Of Bastards born in Hospitals, &c.

155. By 33 Geo. 3. c. 54. s. 1. it is enacted, That no hospital or place shall be used for the public reception of pregnant women, under public or private support, regulation, and management, in any parish in England, unless a licence shall be first obtained from the justices at their general quarter sessions for the county, riding, division, city, or corporation, wherein such hospital or place shall be situated; and such justices are required to grant such licence to any person, applying for the same, and paying 40s. for every such licence to the clerk of the peace of such county, riding, or division, or to the town-clerk of such city or corporation.

To be stamped with a 5s. stamp, and signed by two justices.

156. By s. 2. every such licence shall be written on parchment, and stamped with a five shilling stamp; and a copy thereof shall be entered in a book to be kept for that purpose by such clerk of the peace, or town-clerk, and preserved as a public register among the records of the county, or corporation, &c. to be inspected by any person on payment of one shilling; and every such licence shall be signed by two justices at their general quarter sessions, and shall entitle the person to whom such licence shall be granted, to keep one hospital, or place, and no more, for the public or charitable reception of pregnant women.

157. By s. 4. there shall be fixed and kept up over the door, or public entrance of every such hospital, or place, an inscription in large letters, in the following words: *videlicet*, licensed for the public reception of pregnant women, pursuant to an act of parliament passed in the thirteenth year of the reign of king George the third, and the affixing and keeping such inscription shall be a condition in every such licence; and in case such inscription shall not be fixed and kept over the door or public entrance of such hospital, or place, such licence shall become null and void.

158. By s. 5. no bastard child born in any such hospital, or place, shall be legally settled in, or shall be entitled to any relief as a parishioner from the parish wherein such hospital, or place, shall be situated; but every such child shall follow the mother's settlement.

The charges of conveying bastards and their mothers from any hospital, &c. how defrayed.

159. By s. 6. in case it shall become necessary to remove the mother of the child so born a bastard, and the child so born a bastard, or either of them, from the parish or place in which such hospital, or place shall be situated, to the parish, or place, to which such woman shall belong, or where she shall have obtained her last legal settlement, such parish or place, being within twenty miles of such hospital, house, or place, to which she shall be so removed, shall be chargeable with, and liable to the payment of all expences incident to such removal, to be allowed and settled by any justice for the county or place, in which the parish or place shall be situated, to which such mother and child, or either of them, shall be removed as aforesaid: and if such expences, after being allowed and settled as aforesaid, and demand thereof being made in writing, directed to the churchwardens or overseers of the poor of the parish to which such mother and child, or either of them, shall be removed as aforesaid, shall not be paid within two days after such demand; then, any one of his majesty's justices for the county or place, in which the parish shall be situated, to which such mother and child, or either of them, shall be removed, shall by warrant under his hand and seal, levy the same by distress and sale of the goods and chattels of the churchwardens or overseers of the poor, making such refusal as aforesaid, or on the goods and chattels of any or either of them.

160. By s. 7. an appeal is given to the quarter sessions. See tit. Appeal, Div. III.

The parish-officers and all magistrates empowered to apprehend the fathers of any bastards.

161. By s. 8. all officers belonging to the parish wherein the mother of such child so born a bastard shall have been last legally settled, and all magistrates of the county, or place, wherein such parish shall be situated, may apprehend the reputed father of any such bastard child, to take security for the indemnity of the parish, and to punish the parents, and to do every other thing relative to such case of bastardy, in the same manner, and with the same powers, as such magistrates or officers might or would have had in case such child had been born in such parish or place.

162. By s. 9. nothing in this act shall extend, to alter the law relative to the settlement of any bastard child so born as aforesaid, in cases where the mothers settlement cannot be ascertained.

Owners or masters of hospitals to take the woman before admitted to be examined before a justice.

163. By s. 10. the owner, keeper, or other person, who shall have the care, or management, of such hospital, or place, shall, before the admission of any pregnant woman into such hospital, or place, forthwith (unless prevented by sickness) take such woman before some justice for the county, or place, where such hospital, or place is situated, which justice is required to examine her upon oath whether she is married or single; and in case such pregnant woman shall not be able, at the time of such admission, to go before such justice, then, the said owner, &c.

is required, when, and so soon as such woman shall be sufficiently recovered, to take such woman before such justice, to be by him examined as aforesaid, and all the particulars of such examination, shall be entered in a book, to be kept for that purpose by such owner, &c. and signed by the justice before whom such examination is taken.

164. By s. 11. if any woman on admission into such hospital, or place, shall produce an affidavit sworn by her before such justice, that she is a married or single woman, (which affidavit shall be kept and filed at every such hospital, or place,) then such woman shall not be liable to go before any justice, or to be further examined on oath as to her marriage.

165. By s. 12. if any woman shall be *delivered of a bastard child* in such hospital, &c. such owner, &c. shall, four days at the least before any such woman shall be discharged, give a personal notice, or notice in writing, of such delivery, to be left at the usual place of abode of the overseer, or churchwarden, of such parish or place wherein such hospital, &c. is situated; and such overseer or churchwarden after such notice given, shall attend at such hospital, &c. within the time so notified as aforesaid, and shall convey every such woman before some justice of the county, or place where such birth shall happen, who shall examine every such woman upon oath relative to her last legal settlement, and shall certify, in writing, to such overseer or churchwarden the whole of such examination, who shall cause the same to be deposited and kept amongst the books and papers belonging to such parish or place.

166. By s. 13. if at any time such overseer or churchwarden shall, upon such attendance, be informed by such owner, &c. that any such woman is not sufficiently recovered to be carried before such justice, such overseer or churchwarden shall wait till a further notice shall in like manner be given; and such notices, from time to time, shall be repeated as occasion may require.

167. By s. 14. every such owner, &c. may detain in such hospital, &c. every such woman so delivered of a bastard child, till she shall be adjudged in a fit condition to be discharged, and until she shall have been examined before some justice as aforesaid, with respect to the place of her last legal settlement.

168. By s. 15. no person whatsoever shall detain in such hospital, &c. any woman so delivered of a bastard child for a longer time than six weeks after the birth of such child, unless by her own free consent.

169. By s. 16. every such owner, &c. who shall will-
How penalties may be recovered and applied. fully neglect to comply with the directions of this act, shall forfeit for every such neglect 50*l.* and every such overseer or churchwarden neglecting to comply with the directions of this act, shall, for every such neglect, forfeit 10*l.*; which forfeitures shall be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, by any person who shall sue for the same; and one moiety of such forfeitures shall go to the use of the poor of the parish where such offence shall have been committed, and the other moiety to the person who shall sue for the same.

170. By s. 17. if any action or suit shall be commenced against any person for any thing done in pursuance of this act, the defendant may plead the general issue, and give this act and the special matter in evidence and that the same was done by the authority of this act; and if

afterwards a verdict shall pass for the defendant, or the plaintiff shall be nonsuited, or discontinue the action, or prosecution, or judgment shall be given against him, upon demurrer or otherwise; then such defendant shall have treble costs.

171. By s. 18. no such action or suit shall be brought by virtue and in pursuance of this act, unless the same be commenced within six calendar months after the offence committed.

172. By s. 19. this act shall be deemed a public act.

173. By 20 Geo. 3. c. 36. s. 2. all bastard children born in the house of industry within any incorporated hundred or district, (for which any statute has been made for the relief and employment of the poor,) shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

174. By 33 Geo. 3. c. 54. s. 25. (for the regulation of Friendly Societies.) Every child which shall be born a bastard in any parish or place, during the mother's residence therein, under the authority of that act, shall have the same settlement which the mother had at the time of the birth of such child.

CERTIFICATE.

I. THE STATUTES.

II. OF THE GRANTING AND ALLOWANCE.

III. DIRECTION AND DELIVERY.

IV. EXTENT AND EFFECT.

V. DURATION AND DISCHARGE.

I. Of the Statutes.

Persons going into any parish to do harvest-work, and carrying with them a certificate from their own parish, shall not gain a settlement by residence elsewhere.

1. By 13 and 14 Car. 2. c. 12. s. 3. any person may go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he carry with him a certificate from the minister of the parish, and one of the churchwardens and one of the overseers for the poor for the said year, that he has a dwelling-house or place in which he inhabits, and hath left wife and children, or some of them there, (or otherwise, as the condition of the persons shall require,) and is declared an inhabitant there: and in such case, if the person shall not return to the place aforesaid, when his work is finished, or shall fall sick or impotent whilst he is in the said work, it shall not be accounted a settlement in the cases abovesaid, but two justices may convey the said person to the place of his habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person shall refuse to go, or

l not remain in such parish where he ought to be settled as aforesaid, shall return of his own accord to the parish from whence he was removed, any justice of the city, county, or town corporate, where the said person shall be committed, may send such person offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in labour; and if the churchwardens and overseers of the poor of the parish to which he shall be removed, refuse to receive such person, and to provide relief for him, as other inhabitants of the parish, any justice of that division may bind any such officer in whom there shall be default, to the next sessions, there to be indicted for his contempt in that behalf.

2. By 8 & 9 Will. 3. c. 30. reciting that forasmuch as many poor persons chargeable to the parish, township, or place, where they live, merely for want of work, would in any other place, where sufficient employment is to be had, maintain themselves and families, without being burthened to any parish, &c. but not being able to give such security, as will, or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in hand-writing, they are for the most part confined to live in their own parishes, &c. and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands: it is enacted, That if any person whatsoever, that shall come into any parish or other place, there to reside, and shall at the same time deliver to the churchwardens or overseers of the poor of the parish or place where such person

comes to inhabit, or to any of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no churchwardens, to be attested respectively by two credible witnesses, every acknowledging the person mentioned in the said certificate to be an inhabitant legally settled in that parish, township, or place, every such certificate having been allowed of, and subscribed by two justices of the city, county, liberty, borough, or town-corporate, wherein the parish or place, from whence any such certificate shall come, doth lie, shall oblige said parish or place to receive and provide for the person mentioned in said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or forced to ask relief of the parish, township, or place to which such certificate was given; and then, any such person, and his or her children, though not in that parish, not having otherwise acquired a legal settlement there, shall be removed, and settled in the parish or place from whence such certificate was brought.

3. By 9 and 10 Will. 3. c. 11. reciting, that doubts had arisen upon construction of the last cited act, by what acts any person coming to reside within any parish, by virtue of any such certificate as aforesaid, might procure a legal settlement in such parish, and whether such certificate did not amount to a notice in writing, in order to gain a settlement: for explaining thereof, it is enacted, that no person

parish, unless he lease a tenement of 10l., &c.

annual office in

After 24th June 1713, no apprentice nor hired servant to one who came into a parish by certificate shall gain a settlement there, &c.

Witnesses to certificates of settlements to swear that they saw the churchwardens, &c. sign them.

whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and *bonâ fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office.

4. By 12 *Ann. c. 18. s. 2.* reciting 8 and 9 *W. 3. c. 30.* it is enacted, That if any person whatsoever, who, upon or after the 24th day of June 1713, shall be an apprentice or a hired servant to any person whatsoever, who shall reside in any parish, township, or place, in that part of Great Britain called England, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, &c., such apprentice and such servant shall not gain any settlement in such parish, &c. by reason of such apprenticeship, or of such hiring or serving; but shall have his and their settlements in such parish, &c. as if he had not been bound apprentice or had not been a hired servant to such person.

5. By 3 *Geo. 2. c. 29. s. 8.* after 24th June 1730, the witnesses who attest the execution of such certificates by the churchwarden or churchwardens, overseer or overseers, signing and sealing the same, or one of the said witnesses, shall make oath before the justices who allow the same, (which oath they are hereby authorized to administer,) that such witness or witnesses did see the churchwarden or churchwardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper handwriting; which said justices shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be deemed in all courts whatsoever as duly proved, and shall be received in evidence without any other proof thereof, and all certificates given in pursuance of 8 and 9 *W. 3. c. 30.* before the said 24th June 1730, shall be also allowed in all courts as evidence without other proof, provided the same are duly allowed by two justices, as by the said act is required.

6. But now by 35 *Geo. 3. c. 101.* it being enacted, That no one shall be removed till he or she become actually chargeable, the necessity of granting certificates seems to be done away with, not, however, the power of granting them, which still remains as before.

II. Of the Granting and Allowance of Certificates.

7. It is in the discretion of the parish officers to grant or to refuse a certificate; and therefore, although the parishioner applying for it is clearly settled in the parish, and has an opportunity of beneficial employment in the parish to which he wishes to be certificated, yet the court will not issue a mandamus to the parish officers to grant it. *Rex v. St. Ives, 2. 561.*

8. And even if a person to whom they have granted a certificate, lose it, they are not obliged, on this ground, to grant another. *Rex v. Hayden*, ii. 565.

9. The parish officers may grant a certificate to the poor and impotent, under special circumstances, such as to enable them to remain in a hospital for cure. *Rex v. St. Peter and St. Paul, Cald.* 213. ii. 540. See *St. George v. St. Olaves*, ii. 665.

10. The justices have a discretion also as to the allowing or not allowing a certificate; and they may refuse to sign it if liable to objection. *Rex v. Wooton St. Lawrence*, ii. 563.

11. It must appear that the justices signed as allowing, and not merely attesting the certificate. *Rex v. Boston, Str.* 94. ii. 561.

12. The same persons may, however, sign in both capacities. *Ibid.*

13. A certificate which appears to have been legally allowed shall be presumed to have been regularly attested. *Barleycroft v. Coleorton, Str.* 402. ii. 561.

14. If one of the two persons attesting a certificate make his mark, the fact of his having signed is sufficiently attested by the justices certifying that the other witness swore that he was present and saw the execution of it. *Rex v. Ashton Keimes, Burr. S. C.* 725. ii. 563.

15. When a certificate is above thirty years old, an allowance written in the margin and signed by two justices is sufficient, although there be no certificate of the affidavit of one of the attesting witnesses, pursuant to 3 Geo. 2. c. 29. *Rex v. Farrington*, 2 T. R. 466. ii. 565.

16. But unless a certificate be signed by the majority of the parish officers, although properly allowed and attested by two justices, yet it is not binding. *Rex v. Tamworth*, ii. 564.

17. See also *Rex v. Wymondham*, 6 T. R. 552. ii. 507.

18. And therefore where a certificate was signed by only one churchwarden and one overseer, when at the time of granting it there were four churchwardens and two overseers of the parish, it was held to be void. *Rex v. Margam*, 1 T. R. 775. ii. 565.

19. The certificate also must be signed by the churchwardens and overseers of the township, parish, or place, granting it; and therefore a certificate granted by some of the parish officers of a parish, consisting of several hamlets, and having separate overseers, although they therein described themselves as officers of the parish at large, may be explained by evidence that they were only officers of

the hamlet in which the pauper was settled. *Rex v. Samburn*, 3 T. R. 609. ii. 568.

20. A certificate granted by one overseer alone for a township is void, (for the stat. 13 and 14 Car. 2. c. 12. requires at least two for every place,) and, of course, gives no security to the certificated parish against the gaining of a settlement there by the party named in it, such certificate not being made pursuant to the stat. 8 and 9 W. 3. c. 30. which requires it to be made "by the churchwardens and overseers, or the major part, or by the overseers where there are no churchwardens." *Rex v. Clifton*, 2 E. R. 168. ii. 573.

21. Where one of two churchwardens was also appointed sole overseer of the poor, a certificate signed by these two was held to be void. "How can it be said that that which is directed to be done by two overseers at least, joined to the churchwardens, or the major part of them, can be done by one overseer and one churchwarden, or by two churchwardens, one of whom acted in the double character of churchwarden and overseer?" *Per Lord Ellenborough; Ch. J. Rex v. St. Margaret's, Leicester*, 8 E. R. 332. *supp.* 22.

22. See the 51 Geo. 3. c. 80. ss. 1, 2. also 54 Geo. 3. c. 107. ss. 1, 2, 3. containing several regulations as to the signing, &c. certificates by the parish officers, given at length under title *Apprentice, Arts*, 202. 203.

III. Of the Direction and Delivery.

23. A certificate needs not be directed at all; it is considered merely as a general acknowledgment of the pauper being a parishioner of the parish granting it. *Rex v. St. Nicholas in Harwich*, Str. 1163. ii. 562.

24. A misdirection is a void direction. *Ibid.*

25. Where a certificate was directed to the parish of A. or any other parish in the city and county of Coventry, and was delivered to the parish officers of B., which was also in C., it was held to be operative there, the stat. 8 and 9 W. 3. c. 30. not requiring that the certificate should be directed to any particular parish. *Rex v. Lilington*, 1 E. R. 438. ii. 570.

26. But see *Rex v. Wymondham*, 6 T. R. 552. ii. 570. where Lord Kenyon says, A certificate must be directed to one parish in particular. It would seem, however, his lordship intended that if it once had had effect in one parish, it was not available as respected any other. See also *Rex v. Lubbenham*, 4 T. R. 251. ii. 584. where Lord Kenyon also says, that there must be a particular parish in contemplation at the time when a certificate is granted.

27. The parish of Menwith granted a certificate to the pauper,

directed to the parish of *Reade*, and the pauper, after a residence there for many years, got back the certificate, and went with it to another parish in the same township, where he had purchased a freehold, and delivered it to the parish officers there, and it was held, that this last parish was not bound by the delivery of the certificate, for that no other parishes could be concerned in this certificate, except the parishes of *Menwith* and *Reade*; and that he had a right to go and live in his freehold without it. *Rex v. Bishopside*, ii. 580.

28. A certificate, though regularly signed, allowed, and attested, is of no effect unless properly delivered; for the statute 8 and 9 *W. 3. c. 30.* expressly requires, that the person coming into the certificated parish, "shall at the same time procure, bring, and deliver it to the churchwardens or overseers of the parish or place where such person shall come to inhabit." *Rex v. St. Nicholas*, ii. 562.

29. As therefore this act requires a delivery of the certificate at the time the pauper goes into the certificated parish, a delivery at any time after is not sufficient; for the withholding it for any time may be the means of introducing a fraud on the certificated parish. *Rex v. Wensley*, ii. 569.

30. In another case it was held, that in order to prevent the settlement of an apprentice bound to his master, who was residing in the parish under a certificate from a friendly society, under 33 *Geo. 3. c. 54.*, it was not sufficient merely to produce the certificate, (upon an appeal to the sessions from an order of removal of the apprentice to such parish,) but that such certificate must be shewn to have been delivered to the parish officers before the service of the apprentice; the court saying, that the mere giving of the certificate by the society to a member was not sufficient, by the act of parliament, to protect his residence under it in the parish without a delivery of it to the parish officers; and that its remaining in the pocket of the certificated person was not sufficient to prevent a settlement being gained under him. *Rex v. Egremont*, 14 *E. R.* 253. *supp.* 21.

IV. Of the Effect and Extent of a Certificate.

31. A certificate derives its effect from its delivery; and therefore a certificate of a prior date, though not delivered till after the removal of the pauper, is conclusive as against the parish which granted it. *Rex v. Buckingham, Cald.* 64. ii. 564.

32. But the delivery of a certificate will not have the effect of vacating a settlement previously gained in the certificated parish.

Thus, where the pauper lived one month in *A.* on a tenement of 10*l.* a year, and then the parish of *B.* granted a certificate to *A.*, it was held to be of no avail in defeating his settlement in *A.*, although at the time when it was granted, the 40 days had not expired. *Rex v. Findern*, ii. 583.

33. If a certificate be properly delivered, the certificated persons cannot be removed until they become actually chargeable. *Little Kire v. Woodfall*, 2 *Salk.* 530. ii. 576. See also *Rex v. St. Mary, Westport*, 3 *T. R.* 44. ii. 567.

34. It was formerly held that a certificate was binding on the parish which granted it against all other parishes whatever. *Horn-ton v. St. Mary Axe*, *Salk.* 535. ii. 585. n.

35. But it is now held that a certificate only binds the certifying parish, as to that parish to which it is given, and leaves it, as to all other parishes, as they were before the certificate act existed. *All Saints v. St. Giles*, *Salk.* 530. ii. 577. *Rex v. Lubbenham*, 4 *T. R.* 251. ii. 584.

36. It is, however, strong *prima facie* evidence as to other parishes. *Per Buller, J. Rex v. Lubbenham*, *ibid.*

37. Where a pauper came to *A.* under a certificate from *B.*, and was removed by *A.* to *C.*, where he had obtained a settlement subsequent to the settlement gained in *B.*, it was held, that he might properly be so removed, since the certificate was conclusive only as between the certifying parish, and that to which the pauper came under it. *Rex v. St. Martin at Oak*, 16 *E. R.* 303.

38. The certificate concludes the parish giving it as to all the facts stated in it; where, therefore, a man living with a woman, who was reputed to be his wife, went under a certificate, owning them to be such, into another parish, and there had six children, the certifying parish was not allowed afterwards to dispute the validity of the marriage, so as to throw the burden of the children upon the certified parish, although the woman swear that she never was legally married to the man, which would have had the effect of settling the children in the certified parish where born. *New Windsor v. White Waltham*, *Str.* 186. ii. 577. acc. *Rex v. Headcorn*, ii. 578. *Rex v. Ullesthorpe*, 8 *T. R.* 465. ii. 601.

39. Not only the persons mentioned in the certificate, but all legitimate children born, while it continues in force, are virtually included in it. *Rex v. Sherborne*, ii. 578.

40. As also a second wife married after the certificate granted, and therefore an apprentice to such person after her husband's

not gain a settlement in the certified parish. *Rex v. ii. 593. 5 T. R. 266.*

also where a certificate was given acknowledging "Ann inster, and the child or children that she now goeth with, inhabitants legally settled in our parish, &c." it was held, certifying parish was bound to maintain the child, though *tard* in another parish. *Rex v. Ipsley, ii. 581.*

It makes no difference that such certificate was procured re of the parish where the parties reside, provided it be lent, and although the child be inserted in it by mistake. *stock, ii. 582.*

a certificate stating the woman to be unmarried, and to receive her, together with the child of which she was want, and all other children she might thereafter have, lered not to extend to an illegitimate child born 8 years b. *Rex v. Mathon, 7 T. R. 362. ii. 600.*

ere the son of a certificated person, born after the certifi- ed, when he had attained 20 years of age, was hired and

a year in the certificated parish, yet, being virtually in- the certificate, the court held that he did not gain a set- ty such hiring and service. *Rex v. Bray, ii. 580. acc. im v. Maid's Moreton, ib. n.*

ere a son was born in the certificated parish, under the , and was bound an apprentice in the parish, and his pa- six months before the expiration of his time, it was held d not gain a settlement in the parish, although he resided ore than 40 days after the death of those to whom the had been given. *Rex v. Alfreton, 7 T. R. 471. ii. 475.*

l where the certificate was granted to A., and his children one of whom entered into three several contracts of hir- r each of which he served at least a year, living all the he certificated parish, and afterwards married and conti- ve in such parish, although not with his father at all after ge, it was held that he gained no settlement in the certi- arish by such hiring and service, such parish being by the certificate. *Rex v. Testerton, 5 T. R. 258. ii.*

a later case where the son of the person to whom the cer- as granted was mentioned by name in the certificate, it was his son could gain no settlement in the certificated parish ncipated, although he had served a year under a regular ad afterwards married and had a family; and the court

said, that there was a distinction taken in the case of *Rex v. tertton*, between those cases where the son is mentioned by name in the certificate, and where the certificate is granted to a person in his family generally; that in the latter case the certificate would extend to the grandson, in the former that it would extend to the son until emancipated, as the son of a son named in the certificate. *Rex v. Bath Easton*, 8 T. R. 446. ii. 601.

48. Where a widow continued to reside under a certificate granted to her husband, and her son, born under the certificate and living with her unemancipated, hired a servant, held that such servant gained no settlement by the hiring and service. *Rex v. Sowerb*, E. R. 276. ii. 446.

49. But a certificate only includes the certificated man, his wife and those children who live with him, "who form his fireside," and therefore does not extend to grandchildren, the issue of a son forming the head of a distinct family. *Rex v. Darlington*, ii. 588. 4 T. R. '

50. And where it was granted to a father, mother and two young children by name, it was held not to extend to an elder child named in it, who maintained himself, and whom it was not wished to remove. *Rex v. Storrington*, 7 T. R. 133. ii. 598.

51. The 35 Geo. 3. c. 101. did not repeal 33 Geo. 3. c. 54. and therefore, where an unemancipated daughter was delivered of a bastard child, in the township of I, during her father's residence there under a certificate acknowledging him to be a member of a friendly society established under 33 Geo. 3. c. 54. the court held that such certificate extended, not only to him, but to all the members of his family also; that the daughter, therefore was, at the time of her delivery, residing in the township under the authority of 33 Geo. 3. c. 54. and that, by s. 35. of that act, the settlement of the child followed that of the mother. *Rex v. Idle*, 2 B. & A. 149.

52. If an apprentice to a certificated man be assigned to a new person in the certified parish, the certificate will have the effect of preventing his gaining a settlement in that parish under the indentures. *Rex v. Hinckley*, 4 T. R. 371. ii. 437.; but see *Rex v. Sland*, ii. 604.

53. And where an apprentice having served part of his time as a freeman was assigned to a certificated man for the remainder, it was held that he gained no settlement in the certificated parish during such service. *Romsey v. St. Michael's*, ii. 435. See *Rex v. T. cester*, under tit. "Settlement by Marriage.*"

* See further under title "Settlement by Apprenticeship."

V. *The Continuance and Determination of Certificates.*

54. A certificate continues until the parish granting it shew clearly some matter in discharge thereof; for the court will not presume such discharge from other facts. *Rex v. Warblington*, 1 T. R. 241. ii. 609.

55. A certificate is discharged by the certificated person becoming chargeable, and being removed back to the certifying parish. *Rex v. Sudbury*, ii. 602.

56. So also a certificate is discharged by an order of removal from a third parish, which also was certificated, to the certifying parish. *Rex v. Birdham, Cald.* 506. ii. 607.

57. A certificate is also discharged by the certificated person abandoning the certificate, by voluntarily leaving the parish to which he was certificated. *Rex v. Newington*, 1 T. R. 354. *Rex v. St. Michael's, Coventry*, 5 T. R. 526. ii. 640.

58. But the absence and circumstances must be such as clearly to shew that he had no intention of returning to the certificated parish, and that he meant to waive and desert the certificate. *Rex v. Taunton St. Mary Magdalen, Burr.* 3. C. 402. *Rex v. Frampton, Doug.* 417. ii. 603.

59. Therefore where the pauper voluntarily left the parish to which she was certified, but voluntarily returned again to the same house in the certificated parish, and to a branch of the same family with whom she had lived under the certificate, it was held that the certificate was not abandoned, though she had been absent seven years, and had several times been hired and served for a year in the certifying parish. *Rex v. Keel, Cald.* 144. ii. 605.

60. But Lord Mansfield was first of opinion that the pauper in the last-mentioned case returned independently, and *sui juris*, rather than to her old house and parish under the certificate, and Lord Kenyon, in *Rex v. Heath* said, it seemed to him that Lord Mansfield's first thoughts were best. *Rex v. Heath*, 5 T. R. 583. ii. 614.

61. Where the son of a certificated person served a year under a yearly contract, in the parish granting the certificate, and then returned under age to his father's house for a short time, and then served another year with another master under a yearly hiring in the certificated parish, it was held on the authority of the above case of *Rex v. Keel*, that he did not thereby gain a settlement in the latter parish. *Rex v. Ingworth*, 8 T. R. 329. ii. 616. And see *Rex v. Collingburn Ducis*, 4 T. R. 199. ii. 44.

since the 12 *Ann. c. 18. s. 2.* only says that the apprentice shall not gain a settlement in the parish to which the master was certificated. *Rex v. Spotland*, ii. 604.

75. The certificate, also, may be discharged by the residence of the certificated person on his own estate; and this, whether he has acquired the estate by operation of law, or by his own act; and whether the estate be freehold, or leasehold, or copyhold. See *Settlement by Estate*, post.

76. And if an apprentice be bound to a man certificated to one parish, after he has purchased an estate in another, he gains a settlement by inhabitancy in such other parish for forty days under the indentures. *Rex v. Bishopside*, ii. 433.

77. If a person, formerly settled at *A.*, receive, while living on his own estate in *B.* a certificate from *A.*, the certificate is discharged by his subsequent residence at *B.* *Rex v. Ufton*, 3 *T. R.* 354. ii. 533.

78. Where a certificated person gained a settlement in the certificated parish by residence on a purchased estate, this settlement was held to be conveyed to his unsettled children, and this although such children were named in the certificate. *Rex v. Deddington*, ii. 258. *Rex v. Coldashton*, ii. 530. *Rex v. Long Wittenham*, ii. 531. (See more at length under title *Settlement by Estate*.)

79. Subsequently the court determined, in a case where a father came into a parish with a certificate and there gained another settlement, that the settlement of the son (not emancipated, and mentioned in the certificate by name) shifted with that of his father, and that he became settled in the certificated parish. Lord *Ellenborough*, Ch. J. said, "it is mere artificial reasoning which makes a distinction between such of the children as are, and such as are not named in the certificate; a distinction which the act itself does not make; then as the child, though named, was still to be considered only as a constituent part of the family, it brings it to the question, whether he was ousted of his derivative settlement from the father? Upon that point I think the language of Lord *Mansfield* is founded on reason, and not opposed by the act, that the children of all parents must have the settlement of the father until they acquire another for themselves: I think, therefore, that the pauper in this case, continuing part of his father's family at the time, derived the settlement from him, and was not repelled from it by the circumstance of being named in the certificate." *Rex v. Leet Wotton*, 16 *E. R.* 118. *supp.* 23.

80. A second certificate to a pauper discharges the former one given by the same parish. *Rex v. Birdham*, ii. 607. *Rex v. St. Peter in Derby*, 1 T. R. 218. ii. 609.

81. A certificate to one of several consolidated parishes is discharged by the certificated person being hired and serving for a year in another of the parishes. *Rex v. Wymondham*, 6 T. R. 532. ii. 615.

82. A certificate is also determined, by the certificated person taking a lease of a tenement of the value of 10*l.* in the certificated parish. 9 & 10 W. 3. c. 11.

83. So also renting a tenement of 10*l.* a year, and forty days residence will avoid a certificate granted after the taking and before the expiration of the forty days. *Rex v. Findern*, ii. 606.

84. A certificate may also be determined by executing some annual office in the parish, being legally placed in such office. 9 & 10 W. 3. c. 11.

85. Where a person settled in *A.*, removed to *B.* and gained there a settlement, and afterwards *A.* granted a certificate acknowledging him to *B.*, the court held that this certificate was of no avail, for, although it was according to a private agreement between the parishes, a private agreement cannot alter the law. *Harrison v. Lewis*, Salk. 253. ii. 576.

CERTIORARI.

I. UNDER WHAT CIRCUMSTANCES IT WILL ISSUE.

II. FORM OF THE WRIT AND RETURN THERETO.

1. Generally speaking, all orders of justices may be removed by certiorari, for the Court of King's Bench, having a superintendency over all courts of an inferior criminal jurisdiction, may, in the plenitude of its power, award a certiorari, unless restrained by the express negative words of the legislature. See *Hawk*, P. C. 144. *Rex v. Mosely*. Burr. 1042. *Rex v. Eaton*, 2 T. R. 89. *Rex v. Jukes*, T. R. 542, &c.

2. But no proceedings of magistrates, except judicial acts, can be removed. *Rex v. Ledyard*, Say 6. *Rex v. Lloyd*, Cald. 309.

3. Nor in any case where it appears clear that the justices were warranted in doing what they did. *By Lord Kenyon. Rex v. Justices of Glamorganshire*, 5 T. R. 279.

4. A certiorari does not lie to remove a poor rate; but it lies to remove orders of justices in sessions respecting the poor's rate *Rex v. Uttoxeter*, Str. 932. i. 192. *Rex v. Justices of Shrewsbury* Str. 975. i. 293. *Anon.* i. 293.

5. It is a general rule that no certiorari shall be granted to remove an order of justices from which the law has given an appeal to the sessions, until the matter be determined on the appeal or the time for appealing have elapsed. And if an order be removed before appeal it shall be sent down again. *Salk.* 147. ii. 759.

6. It is said that advantage must be taken of this rule upon the motion to file the order, for if it be filed it is too late. *ibid.* But see *Rex v. Sparrow*, 2 T. R. 196. n. where the court quashed a certiorari which had issued pending an appeal by a vagrant against a commitment.

7. The rule, however, just mentioned extends only to cases where there is a limited time for appealing, as to the next quarter sessions; but the statute 43 Eliz. is not so restrained, and therefore it can never be said that the time for appealing under the statute is out. Thus a certiorari lies to remove an appointment of overseers before appeal under the last mentioned statute, unless the appeal be lodged. *Warwick case*, Str. 991. i. 760.

8. And where there is only one party who has a right to appeal and he waives his privilege of resorting to the sessions, and elects to come into the court of King's Bench, the proceedings may be removed by certiorari at once; but where two parties have the right to appeal, and the time for appealing is fixed by law, it is unreasonable to grant a certiorari until that time have elapsed. *Rex v. Harman*, And. 343. ii. 760. *Rex v. Houlditch*, ii. 761. see also *Rex Hanley*, *ibid.*

9. Several orders, relating to the same persons and matter, may be removed by one certiorari. *Rex v. Harman*, ii. 760.

10. By 5. Geo. 2. c. 19. s. 2. no certiorari shall be allowed to remove any judgment or order of justices, unless the party prosecuting such certiorari, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one justice of the county or place, or before the justices at their general quarter sessions or general sessions, where such judgment or order shall have been given or made, or before any one of his Majesty's justices of the court of King's Bench, in the sum of 50*l.* with

*No certiorari to remove justices' orders, without a recognizance of 50*l.* to prosecute to effect.*

On refusal of recognizance justices to proceed. condition to prosecute the same at his own costs and charges with effect, without any wilful delay, and to pay the party in whose favour such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges to be taxed according to the course of the court where such judgment or orders shall be confirmed; and in case the party prosecuting such certiorari shall not enter into such recognizance, or shall not perform the conditions aforesaid, the said justices may proceed and make such further order or orders for the benefit of the party for whom such judgment shall be given, in such manner as if no certiorari had been granted.

11. It is not sufficient that the party and his sureties enter into a recognizance in 25*l.* each; it must be in the entire sum of 50*l.* *Res v. Dunn*, 8 *T. R.* 217.

12. The two sureties must be in addition to the party suing out the certiorari. *Res v. Boughey*, 4 *T. R.* 281.

13. By 13 *Geo. 2. c. 18.* no certiorari shall be granted to remove any conviction, judgment, order, or other proceedings before any justice, or the general or quarter sessions, unless applied for six calendar months after such proceedings had or made, and unless proved upon oath that the party suing out the same, has given six days notice in writing to the justice or justices, or two of them, if so many there be before whom such proceedings have been, to the end that such justices, or the parties therein concerned may shew cause if they think fit against the issuing the certiorari.

14. The six days notice required by 13 *Geo. 2.* must be given before making the motion for a rule to shew cause why the certiorari should not issue. *Res v. Justices of Glamorganshire*, 5 *T. R.* 279. *ii.* 759.

15. A certiorari to remove an order of sessions, on an order of removal must be moved for within six calendar months after such order of sessions made, not within six months after the time of settling the case; and six days notice of such motion must be given to the justices pursuant to 13 *Geo. 2. c. 18. s. 5.*, notwithstanding the order of sessions were made subject to the opinion of the court of King's Bench, on a case to be stated, and such case were stated, and settled by the justices at sessions. *Res v. Justices of Sussex*, 1 *M. & S.* 631. *supp.* 31.

16. When the order remains with the justices, they may be served with the notice; but where the original order has been returned to the sessions, or removed there upon appeal, any two of the justices whose names stand in the caption of the sessions, as having been present there, may be served with it. See 2 *Nolan, c. 40. s. 2.*

17. It is in the discretion of the court during term time, or a

single judge in vacation to grant or refuse a certiorari. *Rex v. Steers*. 1 *Barnard*, 96. *Rex v. Newton*, *B.S. C.* 157.

18. And if it be moved for on the last day of the six months it is sufficient. *Rex v. Newton*, *ib.*

19. The motion must be grounded upon an affidavit, stating that the six days notice has been given; the date and substance of the proceedings to be removed, and any other facts which may shew the irregularity of the proceedings below. *Rex v. Newton*, *ib.* *Rex v. Justices of Glamorganshire*. 5 *T. R.* 279. ii. 763. *Rex v. Eaton*, 2 *T. R.* 89.

20. Neither the six days notice, nor that the application should be within six months are necessary, where any officer of the crown is affected by the order. and the writ is sued for on the part of the Crown. *Rex v. Tyndall and others*, *E. T.* 27 *Geo. 2.* and see 2 *Nolan*, c. 40. s. 1.

21. Nor where a party, in whose favour an order has been made, wishes to remove it into the King's Bench, with a view to the extending of the order. *ibid.*

22. Nor when such a party is desirous of removing a defective order for the purpose of quashing it, and thus giving the magistrates an opportunity of making a fresh order. *ibid.*

II. Form of the Writ of Certiorari, and return thereto.

23. In the case of orders made by justices of the peace, or at the sessions, the writ is directed either to the justices of the peace for the county generally, or to some of them in particular by name, and not to the Custos Rotulorum, although he have the custody of the records. See 2 *Nolan*, c. 40. s. 2.

24. If an order remain in the hands of a justice of the peace, or have been sent by him to the clerk of the peace, it ought to be certified on a certiorari for the removal of it by such justice only; but where it is made a record of sessions, it must be certified as one of their records. See 2 *Nolan*, c. 40. s. 2. and authorities there cited.

25. Where an order remains in the hands of the person to whom it is directed, such as an order of appointment, the certiorari must be directed to him. *ibid.*

26. The proceedings to be removed, must be properly described in the writ; if there be a variance between the writ and the record to be removed, the justices need not certify such record: and if they should return records under it, the court would quash the certiorari, but a second would in that case issue. *ibid.*

27. The return must be by the persons to whom the writ is directed.

rected; if the writ be improperly directed, the proper parties may refuse on that account to certify, but no third person can take the objection if they return the record. *See 2 Nol. c. 40. s. 3.*

28. Every certiorari issuing to the sessions, or directed to divers justices, may be returned by one; and such person needs not sign, but must describe himself as having authority to make the return. *ibid.*

29. The return should be under seal; in one case, however, of a certiorari to remove an indictment for a misdemeanor, this was held to be unnecessary. 4 *Hawk, P. C.* 161. *Rex v. Peckersgill, Cald.* 297. ii. 762.

30. The justices ought to return the very words of the order, unless the certiorari be only to remove, &c. the tenor of the record. *See Nolan, c. 40. s. 3. & note*, whether tenor do not mean true copy. *Rex v. Drake; 3 Salk.* 224.

31. The return must be on parchment. *Rex v. Darlington, 1 Barnard.* 113.

32. A certiorari is of no effect unless it be delivered before its return is expired. *Rex v. Rhodes, 1 Rep.* 994. 2 *Nolan, c. 40. s. 3.*

33. If no return be made to the certiorari, an attachment will issue against the person who ought to have made it; and in the case of a false return the party is liable to an action on the case, or an information. *See 2 Nol. c. 40. s. 3.*

CHARITABLE DONATIONS.

1. By 52 *Geo. 3. c. 102.* several regulations are made for registering and securing charitable donations; but it is not deemed necessary to give the act at length here.

The principal provisions are, that a memorial of the real and personal estate, gross annual income, investment, &c. together with the names of the founders and benefactors, and persons in whose possession the deeds relating thereto, &c. are, of all charitable donations hitherto or heretofore to be founded, shall be registered with the clerk of the peace of the county, within which such poor or other persons to be benefited are; and a copy of such registry shall be transmitted to the enrolment office of the court of Chancery.

Registry in case of charities already founded, to be within six months of passing of the act; of subsequent ones within twelve months after the death of the founder.

2. By *s. 3.* under particular circumstances, the sessions may allow further time, not exceeding six months.

3. By *s. 4.* when persons to be benefitted are not wholly within one county, notice to be given in the gazette of the names of the places wherein the objects of such charity shall be, and the particular and general objects thereof, and the name of the county wherein the registry takes place.

4. By *s. 5.* in case of neglect to register, Chancellor may be petitioned, whose order shall be final.

5. By *s. 6.* no proceedings under the provisions of this act shall decide any right or title, as to the property so registered.

6. By *s. 7, 8.* clerk of the peace to give copies of the memorial when required, to receive 4*s.* if it do not exceed 400 words; if it do exceed, 1*s.* for every 100 words; and the same fee for registering, and for notification in the gazette, and 10*s.* for the copy transmitted to the court of Chancery.

7. By *s. 10.* costs, under certain regulations, to be allowed by the sessions for registering, &c. to such persons as cause the same to be registered.

8. By *s. 11, 12, 13.* act not to extend to any royal foundations, to the Universities, Radcliffe Infirmary, Oxford, Colleges of Westminster, Eton, or Winchester; nor to any collegiate or cathedral church, nor to the Charter, or Trinity House of Deptford Stroud, nor to any funds applicable to charitable purposes for the benefit of the Jews, or Quakers; nor to charitable foundations, the accounts of which are to be passed in the court of Chancery; nor of which the gross annual income does not exceed 40*s.*

9. By *s. 14.* when any body corporate, &c. shall be intrusted with divers charities, &c. all may be stated in the same memorial.

10. A form of the memorial is given in the act.

CHARITABLE TRUSTS.

1. By 52 *Geo. 3. c. 101.* in every case of a breach of any trust, or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court of equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the lord chancellor, lord keeper, or lords commissioners, for the custody of the great seal, or master of the rolls for the time being, or to the court of exchequer, stating such complaint, and praying relief as the nature of the case may require, and it shall be lawful for the lord chancellor, lord keeper, and commissioners for the custody of the great seal, and for the master of the rolls, and the court of exchequer, and they are hereby

required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the cost of such applications, as to him or them shall seem just; and such order shall be final and conclusive, unless the party or parties who shall think himself or themselves aggrieved thereby, shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the House of Lords, to whom an appeal shall lie from such order.

2. By s. 2. provided, that every petition shall be signed by the persons referring the same, in the presence of, and shall be attested by the solicitor or attorney concerned for such petitioners, and every such petition shall be submitted to, and be allowed by his Majesty's attorney or solicitor general, and such allowance shall be certified by him before any such petition shall be presented.

3. By s. 3. neither the petitions, nor any proceedings upon the same or relative thereto, nor the copies of any such petition or proceedings, shall be liable to any stamp duty.

CONSTABLE.

1. By 13 and 14 Car. 2. c. 12. s. 18. a rate may be made to reimburse constables, head-boroughs, or tithing-men, expences occasioned by relieving or removing the poor.

2. And overseers are indictable for refusing to make such rate. *Res v. Barlow, Salk.* 609. i. 332.

3. By 18 Geo. 3. c. 19. s. 4. every constable, head-borough or tithing-man, shall, every three months and within fourteen days, after he shall go out of such office, deliver to the overseers of the poor of the said parish, township, or place, for the time being, a just account in writing, fairly entered in a book to be kept for that purpose, and signed by him, of all sums by him expended on account of the said parish, &c. in all cases not hitherto provided for, by the laws, heretofore made, or by this act; and also of all sums received by him on the account of the said parish, &c. and said overseers of the poor, or their successors, shall, within the next fourteen days after the said account shall be so delivered, lay the same before the inhabitants of the said parish, &c.; and in case the said account be approved of by the majority of such inhabitants, the overseers of the poor of the said parish, &c. for the time being, shall pay out of the poor rates, made or to be made for such parish, &c. such sum of money as shall appear to be due on the said account: but in case the said account, or any part thereof, shall be disallowed, then the said overseers of the poor for the time being shall then deliver back to the said constable, &c. such book of accounts; and the said constable, &c. may produce the said book before any one justice for the county, riding, division, city, town-corporate, franchise,

or liberty, wherein such parish or township shall be situate, giving reasonable notice thereof to the overseers of the poor of the said parish, &c. for the time being; which said justice shall determine any objection made to the said accounts, and settle the sum which to him shall appear due on the said account, and enter the same in the said account, and sign his name thereto; and the overseers of the poor of the said parish, &c. for the time being, shall pay the said sum out of the money which shall come to their hands by virtue of any rate or assessment made or to be made for the relief of the poor.

Appeal.

4. By s. 5. in case the overseer or overseers of the poor of the said parish, &c. for the time being, shall find that the said parish, &c. is aggrieved by any neglect, or thing done or omitted by the said constable, &c. or by any justice, or shall have any material objection to such account, or to such determination as aforesaid, such overseer or overseers, in any of the cases aforesaid, giving reasonable notice to the said justice or constable, &c. may appeal to the next general or quarter sessions of the peace for the county, &c. where such parish, &c. lies; and the justices there assembled shall receive such appeal, and hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there hear and finally determine the same; and the said justices may award to the party for whom such appeal shall be determined reasonable costs, in the same manner that they are empowered to do, in case of appeals concerning the settlement of poor persons, by the 3 & 9 Will. 3. c. 30.

5. By s. 6. In all corporations or liberties which have not four justices, the overseers may appeal to the next general or quarter sessions of the county, riding, or division, wherein such corporation or liberty is situate.

6. It has been decided in a late case that the expenses of a constable in prosecuting an assault committed upon him in the execution of his office are not within the last mentioned statute, and that the overseers cannot defray them out of the poor's rate. *Res. v. Bird & others.* 2 B. & A. 522.

7. By 33 Geo. 3. c. 55. constables are liable to be fined for disobedience to orders of justices.

8. See 7 Jac. 1. c. 5. 21 Jac. 1. c. 12. 24 Geo. 2. c. 44. as to the general protection afforded to constables, &c. and cases of *Paxton v. Williams and others.*, 2 B. & A. 331. *Theobald v. Crichmore*, 1 B. & A. 227. and *Jones v. Hall.* 3 E. R. 445.

9. Replevin is not an action within the 24 Geo. 3. c. 44. s. 6 which protects constables, &c. (and, amongst others, parish officers distraining for a poor's rate) acting under a magistrate's warrant, from any action until demand made, or left at their usual place of abode, &c. by the party intending to bring such action, &c. *Fletcher v. Wilkins*, 6 E. R. 283. i. 702.

10. In a case where the putative father of a bastard had been

apprehended, and the constable let him escape, the sessions made an order of maintenance upon the constable and the mother, but it was quashed as to the constable. *Rex v. Ridge*, i. 507.

11. As to the charges of making and selling a distress, see that title, *Art. 2.*

12. If a constable execute a warrant out of his district, he ceases to be under the protection of 24 Geo. 2. c. 44., and may be sued in trespass without joining the magistrate. *Milton v. Green and General*, 5 E. R. 233.

13. A certificate granted by a judge at the assizes, upon the apprehension and conviction of a burglar, exempting the prosecutor and his assignee from "all and all manner of parish and ward-offices," exempts the party from serving the office of petty constable for a township within, but not co-extensive with the parish where the felony was committed, and for which the certificate was granted, to which office he was appointed at the court leet of the manor co-extensive with that township. *Moseley v. Stonehouse*, 7 E. R. 174. i. 709.

COSTS.

1. By 18 Geo. 3. c. 19. s. 1. when any complaint shall be made before any justice, and any warrant or summons shall issue in consequence thereof, such justice may award costs at his discretion, to be paid by either party; and in case of refusal to pay forthwith, or to give security, the same may be levied by distress; and if there be nothing to levy upon, the offender may be committed to the house of correction for the place where he shall reside, to be kept to hard labour for a term not exceeding one month, nor less than ten days, or until such costs, together with the expenses of the commitment, be paid.

2. By s. 2. when upon the conviction of any person upon any penal statute, the penalty shall amount to or exceed 5*l.*, the said costs shall be deducted out of the penalty, at the discretion of the justice, so that the said deduction do not exceed one-fifth part of the penalty, and the remainder of the penalty shall be divided amongst the persons, or given to the person who would have been entitled to the whole before his act.

3. By s. 9. the sessions may make such regulations with respect to costs allowed by this act, as to them may seem just: such regulations, however, must be signed by one of the judges of assize.

4. See the 8 and 9 W. 3. c. 30. s. 3. as to the power of the

sessions of awarding costs in settlement cases. *Under tit. Appeal, ante.* See also 9 Geo. 1. c. 7. s. 9. under title, *Order of Removal.*

5. By 17 Geo. 2. c. 38. s. 4. the sessions may award costs to the party in whose favour an appeal against a poor rate is determined.

6. In both instances of removals and rates, the remedy by distress is confined to cases where the person ordered to pay costs lives out of the jurisdiction of the court that made the order. See 2 Nol. c. 38. s. 5. and title *Appeal against Poor rate.*

7. It is reported in one case, that a mandamus was quashed, which had issued to the justices in sessions, commanding them to give costs to the party in whose favour an appeal had been determined, the court saying, that it was reasonable that they should have a discretion as to allowing them or not. *Rex v. Nottingham*, ii. 756.

8. But in a subsequent case, the court held that the sessions were, in such case, compellable by mandamus to allow them, observing, that it had been so ordered by 9 Geo. 1. c. 7. s. 9. and had been allowed in the case of *Rex v. Boston. St. Mary's, Nottingham v. Kirklington*, *ibid.*

9. It is said, that such mandamus should be directed, not to the whole sessions, but to such as made the order. See 2 Nol. c. 38. s. 5.

10. A mandamus will also issue, it seems, where the sessions, having a discretionary power as to costs, refuse to hear evidence to guide that discretion. *ibid.*

11. It is customary for the sessions to give 40s. unless the case be accompanied with circumstances of vexation or fraud. See 2 Nol. c. 38. s. 5.

12. The sessions cannot order costs on the mere adjournment of an appeal. *Rex v. Stansfield*, ii. 756.

13. Nor can they direct the costs to abide the event of another presumed appeal. *Rex v. Gt. Chart.* ii. 756.

14. Nor to be taxed by the Clerk of the Peace. *Rex v. Skins*, i. 476.

15. An indictment will lie for non-payment of costs ordered by the sessions on the dismissal of an appeal from a poor's rate. *Rex v. Byce*, i. 324.

16. And it is said that the act concerning costs extends to the limited jurisdiction of St. Alban's. *ibid.*

17. An order of sessions directing costs and charges to be paid

needs not state the sums expended. *Maidenbradley v. Wallingford*, 756.

18. Parish officers &c. are not entitled to double costs, upon judgment as in case of a nonsuit in an action against them for the price of goods sold and delivered to them for the use of the poor, *1 Jac. 1. & 21 Jac. 1. c. 12. Blanchard v. Bramble, 3 M. & S. 31.*

19. A judge at *nisi prius* in one instance held, that where parish officers, against whom an order had been made to pay costs, paid them, and upon the order being quashed, brought *indebitatus assumpsit* to recover them back, that it would not lie. *Mead v. Death Pollard, Ld. Raymond, 742.*

20. It is noted in the report that the action was brought by the owners only, whereas the money had been paid by the churchwardens and overseers. *ibid.*

21. Where an order is removed by certiorari, if the party removing succeed in obtaining the judgment of the court, he is not entitled to costs; but, if his rule be discharged, he must pay them taxed by the master of the crown office. *See 2 Nol. c. 40. s. 6. and Rex v. Dore. And. 352, there cited.*

22. For 5 Geo. 2. c. 19. s. 3. enacts, that if the order or judgment shall be confirmed by the court, the person entitled to the costs for the recovery thereof, within ten days after demand, upon oath made of such demand, and refusal of payment shall have an attachment granted for the contempt, and the recognizance shall not be discharged until the costs are paid and the order complied with.

23. By the words "within ten days" it seems should be understood, "at the expiration of". *Rex v. Ireland. 3. T. R. 512. See 2 Nolan, c. 40. s. 6. n. (7).*

24. If the certiorari be superseded "*quia improvide emanavit*," the party is not liable for costs. *Rex v. Wakefield, Say. on costs 306.*

25. Nor if the prosecutor of the certiorari succeed in quashing the orders in part. *Rex v. Madely, Str. 1198.*

26. Upon a case of *Rex v. Great Chart*. however, being cited to the court when the last mentioned case was decided, in which the court affirmed the order of sessions, as to the point of appeal, but quashed a reservation in the same order as to costs in case of a new removal, and determined that the party who had sued out the certiorari should pay costs, the court said, that there the party could not be affected by that part of the order which was quashed, until the sessions had made an actual order about the costs; and that the bringing it up

for the purpose of quashing that part was unnecessary and extremely vexatious, which was the true test to go by. *ibid.*

27. If an order be sent down to the sessions to be restated, and be returned amended, the party by whom it was originally removed is not liable to costs if he abandon the prosecution forthwith. But if he dispute the amended order, instructing counsel and taking the chance of the judgment of the court in his favour when it comes up a second time he must pay costs. *See 2 Nolan, c. 40. s. 6. and authorities there cited.*

28. Upon an application for a mandamus commanding magistrates to receive and hear an appeal, &c. it seems that where the merits are clearly against the party applying, and any misconduct on his part appear, the court will compel him to pay the costs. *See Res v. Justices of Devonshire, Cald. 34.*

29. As to costs, in the cases of pass-warrants and removals, see *post* title *Removal*. *Res v. Stansfield, ii. 674.*

DISTRESS,

Time for sale of the distress must be expressed in the warrant.

1. By 27 Geo. 2. c. 20. s. 1. in all cases where any justice is empowered by any act of parliament to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid, by or in consequence of such act, the justice granting such warrant, may therein order the goods and chattels so to be distrained, to be sold and disposed of, within a certain time to be limited in such warrant so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

Charges of keeping and selling &c. to be deducted.

2. By s. 2. the officer making such distress shall deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus, if any, after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken.

Party entitled to see and take a copy of the warrant.

3. By 28 Geo. 3. c. 49. s. 1. any justice acting as such for any two or more counties, being adjoining counties, may act as justice in all matters

ings whatsoever in anywise relating to any or either of the said justice and all acts of such justice and acts of any constable or other in obedience thereto, shall be as valid, and effectual in the law, to its and purposes whatsoever, as if such act of the said justice were done in the county to which such act more particularly relates, constables and other officers of the said county to which such act is hereby required to obey the warrants and orders of such justice, perform their several duties, under penalties to which any constable or other officer may be liable for a neglect of duty: Provided always, that such justice be personally resident in one of the said counties at the time of doing such act or acts: Provided also, that such warrants or orders be directed in the first instance to the constable or other officer of the county to which the same more particularly relate.

Distress 4. By 33 Geo 3. c. 55. s. 3. in all cases where any penalty, forfeiture, or other money, may by the warrant of any justice be directed to be levied by distress and sale of the goods and chattels of any person, if sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant of distress, on oath thereof made by one witness, before any justice of any other county, riding, division, city, borough, town corporate, or place, (which oath shall be by him certified by indorsement on such warrant,) such penalty &c., or so much thereof as may not have been before levied or paid, may, in case of such warrant and indorsement, be levied by the person to whom such warrant of distress shall have been originally directed, by the sale of the goods and chattels of such person in such other manner, &c. and the money arising by such distress and sale be disposed of in like manner, as if sufficient goods and chattels of such person were found within the jurisdiction of the magistrate originally granting such warrant; and if no such distress can be found, such offender may be forthwith proceeded against according to law: Provided always, That no justice who shall indorse any certificate upon, or authorize the execution of any such warrant of distress, which may not have been granted within his jurisdiction, shall be liable for any irregularity which may have been committed in the levying or granting of such warrant of distress.

It seems settled that the rule which would protect particular portions of property from being taken as a distress, whilst there are sufficient other distrainable goods on the premises, applies only in cases of distress for rent arrear, amerciaments, &c. but not to cases under particular statutes which are rather in the nature of penalties. Thus beasts of the plough, working tools in a shop, are distrainable for the poor rate, although there be other goods sufficient on the premises. *Hutchins v. Chambers*, Burr. 579. *Edgcumb v. Sparks*, Show. 126. i. 249. and see *Bradby on Distress*, 211.

Whenever the words "to be levied by distress" occur in an act or judgment, it is to be intended "by distress and sale." *Rex v. Salk*. 379. *Ld. Raymond*, 583. S. C.

7. The authority given to justices, by any particular act of parliament, to grant a warrant of distress, does not take away the common mode of proceeding by indictment for disobedience to the act: thus it was held, that an indictment lay for disobeying an order of maintenance, although the statute 43 *Eliz. c. 2.* had pointed out a particular punishment, and a specific mode of recovering the penalty inflicted. *Rex v. Robinson, Burr. 799. i. 380.*

8. See further title *Poor rate, Div. vii.*

EVIDENCE.

As relating to I. BASTARDS.

II. CERTIFICATES.

III. DECLARATIONS AND DEPOSITIONS.

IV. EXAMINATIONS OF INFIRM PAUPERS.

V. _____ PRISONERS.

VI. _____ SOLDIERS.

I. *Bastards.* 1. By 13 and 14 *Car. 2. c. 12. s. 20.* any person sued for any thing done in execution of this act, may plead the general issue, and give the special matter in evidence.

2. By 6 *Geo. 2. c. 31. s. 1.* (which see under title *Bastard*), the evidence of the mother is sufficient for an order of filiation.

3. The examination of a pregnant woman taken by a justice under the last mentioned statute is evidence sufficient to authorise the sessions making an order of filiation though the woman be dead. *Rex v. Ravenstone, 5 T. R. 373. i. 483.*

4. On an issue out of chancery to try the legitimacy of the defendant in a cause, the mother may be examined to prove that the child was not her husband's; but after her death her declarations to this effect are not evidence. *Clerk v. Wright, i. 453.*

5. For though the general declarations or the answer of a parent in chancery are good evidence, after the death of such parent, to prove that a child was born before marriage, they are not evidence to prove that a child born in wedlock is a bastard. *Stevens v. Moss, Cowp. 491. i. 458.*

6. The reputed father of a bastard may give evidence that he was not married to its mother, because whether he be the legitimate

natural father, his evidence does not discharge him from the maintenance of it. *Rex v. St. Peter's*, i. 454.

8. The reputed mother may be called to prove that no marriage act subsisted between herself and the putative father. It seems, however, that the declaration of the man and woman that they never were married, ought to be received in evidence. But, Lord Kenyon said, such evidence was open to great observation. *Bramley*, 7 E. R. 330. i. 462. See also *Campbell v. Twemlow*. 1 Price, 81.

9. Yet it has been held, that hearsay evidence of the declarations of a deceased father, as to the place of birth of his bastard child, is not admissible to prove the birth settlement of the child. *Rex v. Smith*, 8 E. R. 539. *supp.* 34.

10. Although a married woman may, on a question of bastardy, give evidence of criminal conversation, yet she shall not be allowed to prove the non-access of her husband. *Rex v. Reading*, i. 455. *Stevens v. Moss*, *Coup.* 591.

11. And it makes no difference that the father is dead at the time of her examination. *Rex v. Kea*, 11 E. R. 132.

12. But where an order of bastardy appeared to be made "upon oath of the mother as otherwise," &c., it was held to be good, the court saying they would presume that such other evidence was also upon oath, and that if there were other witnesses besides the wife, and she were competent to prove any part of the case, they would also presume, that she was examined only to those facts which she was competent to prove, and that the rest of the case was proved by other evidence. *Rex v. Luffe*, 8 E. R. 193.

13. Subsequently, however, where the widow was examined and proved the non-access of her husband during such time as would reverse the effect of illegitimizing the pauper, and the sessions stated the case, that they had "as well on the testimony of the other witnesses as to the non-access of M. Pope (the husband), as on the evidence so given by M. Davey (the widow) as aforesaid, and not exclusively on either, reversed the order of removal, &c.;" the court held clearly that such evidence ought not to have been received; and that the circumstance of the husband being dead at the time, made no difference, and Le Blanc J. added that they were bound by the statement of the case to notice the objection taken to the incompetency of the wife to prove the fact of non-access, since the sessions, after hearing her evidence to that point, had declared that they found the fact as well on her evidence, as on the testimony of the other witnesses, and not exclusively on either. *Rex v. Kea*, 11 E. R. 132. *supp.* 35.

13. The child of a married woman may be proved a bastard by other evidence than that of the husband's non-access. *Thomson v. Saul*, 4 T. R. 356, i. 460.

14. The evidence of a parish register cannot be contradicted by the day-book. *May v. May*, i. 456; *Str.* 1073.

15. No evidence shall be admitted on making a second order to bastardize the children, after an order unappealed from. *Rex v. Woodchester*, i. 457.

16. An order of bastardy must be made on the *visâ voce* testimony of witnesses; it cannot be made on affidavit. *Rex v. Colbert*, *Cock.* 103. i. 495.

17. An order of sessions reciting that it was made on full hearing implies that it was on evidence of the merits. *Rex v. Teriam*, i. 509.

18. The birth of a bastard in a parish is *primâ facie* evidence that its settlement is in such parish. *Rex v. Woodford*, ii. 13. *Semle.*

19. See *Rex v. Heningham*, i. 85. *Rex v. Hedson*, i. 85.

II. Certificate. 20. Parol evidence may be given as to the existence of a certificate. *Rex v. St. Maurice*, ii. 614.

21. On an appeal, the respondents in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer: the court held the evidence to be inadmissible inasmuch as the entry was made by a person having an interest to make it, and observing that it was an established principle that nothing said or done by a person having, at the time, an interest in the subject matter should be received in evidence either for him, or persons claiming under him. *Rex v. Debenham*, 2 B. & A. 183.

22. A certificate above thirty years old shall be received in evidence, although the allowance is not certified as directed by 3 Geo. 2. c. 29. *Rex v. Farrington*, ii. 565.

23. The parties producing, on an appeal at the sessions, a parish certificate of thirty years date, need not give any account of it; for the bare production of it is sufficient. *Rex v. Ryton*, 5 T. R. 223. ii. 625.

24. A certificate granted by some of the parish-officers of a parish, consisting of several hamlets, and having separate overseers, although they therein describe themselves as officers of the parish at large, may be explained by evidence that they were only the officers of a

amlet in which the pauper was settled. *Rex v. Samborn*, 5 T. R. 509. ii. 568.

25. A parish, to discharge itself from a certificate, must give evidence of some fact which clearly has this effect; for the court will not presume a discharge from other facts. *Rex v. Warblington*, T. R. 241. ii. 609.

26. By 3 Geo. 2. c. 29. s. 8. a certificate attested, &c. as required by that act, shall be allowed in all courts as evidence without further proof.

II. *Depositions and Declarations.* 27. If it be proved that a witness was subpoenaed and fell sick by the way, his deposition may be read in evidence, but not if he can be produced. *Phill. Evid.* 360.

28. Formerly the court seemed to be of opinion that the declarations of a pauper, as to facts concerning his settlement were, after his death, admissible evidence. *Rex v. St. Sepulchre*, ii. 353.

29. But now neither the hearsay of the pauper who is dead, nor is *ex parte* examination in writing taken on oath before two magistrates touching his settlement, are admissible evidence of such settlement. *Rex v. Ferry Frystone*, 2 E. R. 54. ii. 359. *Rex v. Abergavilly*, ii. 360. *Rex v. Erith*, 8 E. R. 539. *Rex v. Nuncham Courtney*, E. R. 373. ii. 358.

30. The declarations of a rated inhabitant of either parish are evidence; nor needs such person be previously called and refuse to be examined. *Rex v. Hardwicke*, 11 E. R. 578. *Rex v. Whitley Lower*, 1 M. & S. 638.

31. Declarations of deceased members of a family are admissible to prove a person's relationship, whom he married, how many children he had, or the time of marriage or birth of a child. *Phill. Ev.* 244.

32. Not so hearsay evidence by the pauper of the declarations of his deceased putative father as to the pauper's birth-place. *Erith*, E. R. 539. See *Clerk v. Wright*, ante Art. 4.

V. *Examination of infirm paupers.* 33. By 49 Geo. 3. c. 124. s. 4. whenever it shall happen that any pauper is by age, illness, or infirmity unable to be brought up to the petty sessions to be examined as to his or her settlement, any one magistrate, acting for the district where such pauper shall be, may take the examination of the said pauper, and report the same to any other magistrate or magistrates acting for the said district, and the said magistrates, upon such report may adjudge the settlement of the said pauper, and make and suspend the order of removal, or fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates.

V. Of Prisoners. 34. By 59 Geo. 3. c. 12. s. 28. any justice may take in writing the examination on oath of any person having a wife or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable or other peace officer, by virtue of any warrant of commitment, touching the place of his or her last legal settlement; and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence as to such settlement before any justices, for the purpose of any order of removal, so long only as the person so examined shall continue a prisoner.

VI. Of Soldiers. 35. The examination of a soldier before a magistrate, touching his settlement, is made evidence on an appeal, by the mutiny act, 59 Geo. 3. c. 9. s. 70. which enables any justice for the county, town, or place where any non-commissioned officer or soldier shall be quartered in England, in case he have either wife or child, to cause him to be summoned before "them," in the place where he is quartered, in order to make oath of the place of his last legal settlement; and such justices are required to give an attested copy of such affidavit to the person making the same, to be by him delivered to his commanding officer, in order to be produced when required, which attested copy shall be at any time admitted in evidence as to such last legal settlement, at any general or quarter sessions of the peace.

36. By s. 2. it is provided, that in case any non-commissioned officer or soldier shall be again summoned to make oath as aforesaid, then, on such attested copy of the oath by him formerly taken being produced by him, or by any other person in his behalf, he shall not be obliged to take any other or further oath with regard to his settlement, but shall have a copy of such attested copy if required.

37. As an attested copy is thus made evidence, it has been determined, on a reasonable and obvious construction of the act, that the original examination, which is a higher kind of evidence, ought to be admitted as well as the copy. *Rex v. Warley*, 6 T.R. 534. ii. 553.

38. The statute, however, is to be construed strictly; and therefore no other attested copy is legal evidence, while the original is in existence, except that given to the soldier. *Rex v. Clayton le Moors*, 5 R. 706. ii. 551.

39. For the same reason, it should seem, if the soldier, who has been examined before the magistrates, be abroad, or dead, or have quitted the army, at the time when the appeal is tried, that the original affidavit, or an attested copy, would not be admissible in

idence. "One inconvenience, intended to be remedied by the act, was that of taking a soldier out of the quarters, for the purpose of his being examined respecting his settlement; and in order to ward against this inconvenience, the act directs the magistrates, to take the soldier's examination, to give him a copy of it, to be delivered to the commanding officer; that copy is lodged in the hands of the commanding officer, that it may be afterwards produced when required. But if the soldier go abroad, the same inconvenience is not likely to happen, and the act of parliament does not apply to such a case." *Per Lawrence J. in the last cited case.*

40. In a recent case the court held, that the examination of a soldier, taken under the mutiny act, was to be received as evidence to his settlement, even though he were dead, or absent from the kingdom, at the time when the appeal was tried. Abbott, C. J. "No man entertains a higher opinion of any thing which fell from Mr. J. Lawrence, either judicially, or extrajudicially, than I do. The point, however, upon which he is supposed to have given an opinion, was not the point which was argued before him, or upon which the court pronounced judgment. His attention does not appear to have been directed to the words used by the legislature, "that the attested copy shall, at any time, be admitted in evidence." It has been contended, that the words, "at any time," do not mean at a time when the pauper was either absent from his country, or when he was dead. I cannot, however, find any thing in the act of parliament, from which I can infer, that it was the intention of the legislature to restrain those words to the life of the pauper, or during his residence in this country. On the contrary, it seems to me, that it may have been the intention of the legislature to preserve the memorial of the evidence of the settlement of a person, whose life is exposed to more than ordinary risk. I think, therefore, that we are bound to give full effect to the words of the act of parliament, and consequently, that the examination of the pauper's husband ought to have been admitted in evidence." *Rex v. Warburton*, 3 B. and A. 121. *Supp.* 308.

41. It was determined in a previous case to the last, that such examination of a soldier, so made evidence by the Mutiny Act, must be authenticated by proof, that the signatures are in the handwriting they purport to be, before it can be received in evidence, and does not prove itself *prima facie*, although the paper appear to be in the form prescribed by the statute. *Rex v. Bilton*, 1 E.R. 13.ii. 554.

With respect to Evidence relating to the Poor-rate and the Different heads of Settlement law, see those titles respectively.

INCORPORATED PARISHES.

1. By 22 Geo. 3. c. 83. s. 1. so much of the 9 Geo. 1. c. 7. as respects the maintaining or hiring out the labour of the poor by contract, within any parish, township or place, which shall adopt the provisions of this act, is repealed.

2. By s. 2. the visitor and guardian, appointed as here-
Visitors, &c. after mentioned, of any parish, township, or place, which
may make shall have adopted the provisions of this act, may make
agreements agreements for the diet or clothing of such poor persons
for the diet, who shall be sent to the house or houses to be provided
&c. of per- under the authority of this act, and for the work and
sons sent labour of such poor persons, so that no such agreement
to the poor- shall be made for any longer time than twelve months,
houses. and so that the same shall be under the strictest inspection
 and controul of the visitor, guardian, and governor of such
 poor-house, and also of the justices for the limit where such poor-house
 shall be; two of whom, upon proof of any abuse, shall have power to dis-
 solve such contract.

3. By s. 3. whenever two-third parts, in number and
Conditions value, according to the poor-rate, of the owners or occu-
on which piers of lands, tenements, or hereditaments, within any
parishes shall parish, &c. qualified as hereafter-mentioned, shall, at a
be entitled to public meeting holden pursuant to this act, signify their
the benefits approbation of the provisions herein contained, and their
of this act. desire to adopt them, in the form contained in sched.

No. 1. and shall at such meeting, nominate and recommend
 to the consideration of the justices of the county, &c. or place, where
 such meeting shall be holden, three persons qualified for guardians of the
 poor for such parish, &c. and three other persons qualified to be governors
 of the poor-house for such parish, &c. and fix the salaries to be paid to
 such guardian and governor respectively, and shall procure the consent
 and approbation of two justices for that limit, to such agreement and sa-
 laries, by writing under their hands, in the forms in sched. No. 2. and
 shall cause such agreement to be registered pursuant to this act; every
 such parish, &c. shall from that time be entitled to all the privileges and
 advantages, which can be derived from this act.*

4. By s. 4. where two-third parts, in number and value
Two or more as aforesaid, of the owners or occupiers of lands, &c. within
parishes may in two or more parishes, &c. so qualified as aforesaid, shall
unite. think fit, with such approbation as aforesaid, signified in
 like manner, under the hands of two justices, in the form in
 sched. No. 2. to unite for the purposes of this act, and shall signify their
 desire so to do at a public meeting holden in each of such parishes, &c.

* See post 33 Geo. 3. c. 35. s. 1. Art. 50.

inner hereinbefore directed, concerning a single parish, in the form d. No. 3. an agreement shall be entered into by the guardians of every such parish, &c. or the major part of them, in the form he effect in sched. No. 4. which agreement shall be binding upon eral parties; and every such agreement shall specify the place uch house or houses shall be situate, and the terms upon which reement is made, and shall be entered with the clerk of the peace, -clerk of the county, city, town or district, in which such parishes, ll be situate, and a copy thereof left with him, within three calen- ths after the time of making such agreement, in the form or to t in sched. No. 5. for which entry every such clerk shall rceive ling, and no more; and from that time every such parish, &c. so o be united, shall be entitled to all the privileges and advantages n be derived from this act.

s. 5. no parish, &c. situate more than ten miles from any poor- workhouse, to be provided under this act, shall be united with shes, &c. which shall establish such poor-house or workhouse.

6. By s. 6. the notice for every public meeting directed r by this act, shall be given in the church or chapel of every , and such parish, &c. on three successive Sundays before the ions time of such meeting, immediately after divine service, or on such of the said Sundays as service shall be performed there, and also fixed in writing on such church or chapel if no church or chapel, at some public place within any such &c. where notices of parish business have been usually given, 15 least, before the day to be appointed for such meeting, in the o the effect in sched. No. 6.; and no person shall vote at any such unless he or she be owner or occupier of lands, &c. assessed to rates within such parish, &c. after the rate of 5*l.* per annum, at ; nor shall any such person vote as occupier, unless assessed or o such poor rates: Provided, that in all parishes, &c. wherein all not be ten persons possessed of the qualification aforesaid, rson assessed, or paying to such poor rates, may vote at every eting.

7. By s. 7. two justices of the limit where such poor-house o shall be, or be so agreed to be situated, after such agree- t ment made upon application by two or more persons who for have signed such agreement, and upon producing the same h, &c. to them, may appoint one of the persons so recommended &c. to be guardian of the poor for each of such parishes, &c. in the form in sched. No. 7, or to the like effect; and every rdian shall attend the monthly meetings hereby directed to be nd execute the several powers given to guardians by this act, have all the powers given to overseers of the poor by any other shall to all intents and purposes, except with regard to the nd collecting of rates, be an overseer for such parish, &c. * and penalties, &c. as overseers are by this or any other act; and all r applications directed by this or any other act, to be given to ers, with respect to the management or removal of the poor, given and made to such guardian; but in case any orders of

* See *Rex v. Laughton*, 2 M. & S. 324.

removal or notices, shall, by mistake, be given or sent to the churchwarden or overseer, the same shall be as valid as if given to the guardian; and such churchwarden or overseer shall deliver the same to the guardian, or forfeit 40s.: and in all cases where such guardian shall be appointed, neither the churchwardens or overseers of the poor shall interfere in the management of the poor, but shall continue to have the same powers of making and collecting poor rates as they have at present, and be subject to the like penalties, &c. as they were at the passing of this act.*

8. By s. 8. after the appointment of such guardian, one *Churchwarden or overseer to receive the poor's rate, and pay to guardian, &c.* or more of the churchwardens or overseers of every parish, adopting the provisions of this act, who shall be approved at some public meeting to be holden as aforesaid, shall receive the money to be collected by virtue of such poor rates, and apply the same as follows: if such parish, &c. shall not be united with any other by virtue of this act,

such churchwarden or overseer shall pay to the guardian, such sums, from time to time, as he shall be needful for discharging the bills, and all other necessary expences attending such house or houses, and the poor belonging to such parish, &c. and take receipts from such guardian, for all the money so paid, expressing in every such receipt the purposes for which such money is wanted; and if the said parish, &c. shall be united with any other parish, &c. by virtue of this act, such churchwarden or overseer shall pay, from time to time, to the treasurer of such united parishes, &c. their due proportion of the several expences attending the poor and poor-house therein, and take his receipts for such money; or, if more convenient, shall permit such treasurer, from time to time, to draw drafts upon him for such money, in the form in sched. No. 8. and pay the same when they become due, specifying in every such receipt and draft, the general purposes for which such money is to be applied; all which payments shall be allowed to the said churchwarden or overseer, in his accounts with the parish, &c. wherein such money shall be raised; and the accounts of the churchwarden or overseer, and the guardian, shall be examined at every monthly meeting, and examined and passed quarterly by the visitor of such poor-house, after having been verified upon oath before a justice.†

9. By s. 9. two or more justices for the limit, &c. shall, *Justices to appoint a governor.* after such agreement for adopting the provisions of this act, either by a single parish, &c. or by two or more, upon application by two or more persons who signed such agreement, and upon producing the same to them, appoint one of the persons recommended for governor of such poor-house (in the form in sched. No. 7. or to the like effect,) who shall have the management of the poor persons sent thither, and shall be allowed such salary as specified in the agreement; and the visitor of such poor-house, with the consent of the guardians, or the major part of them, or two or more such justices where a guardian shall be visitor, may remove such governor, upon proof of misbehaviour or incapacity in his office.

* See 33 Geo. 3. c. 35. s. 2. post Art. 51.

† See 41 Geo. 3. c. 9. s. 2. post Art. 56.

10. By s. 10. the guardians for parishes, &c. so united, shall meet after such agreement made, to consider of three proper persons, respectable in character and fortune, fit to be put in nomination for the office of visitor of such poor-house; and shall two or more of them apply to two such justices, and produce to them the said agreement, and the names of the persons whom they recommend, which justices, or within three days after, appoint one of such persons visitor, in form in sched. No. 7. or to the like effect; but if he refuse, then one of the persons so named; and if he decline it, the third person in such list; and if he decline it, the guardians shall, and they are required to serve that office monthly, by rotation, subject to the call of such justices: and every such visitor, if not a guardian, may appoint some proper person to be his deputy or assistant, if he think fit, in the form in sched. No. 9; and every such deputy or assistant, in the absence of such visitor, and under his direction, act as in and to the several matters so committed to the care of the visitor, and make his report thereof, from time to time, to him: and every visitor shall superintend every such house or houses, and settle the accounts with the guardians and the treasurer of such house, if any question arise, and also settle all questions concerning the persons which ought to be sent to such house or houses, and by every prudent means in his power to see that the regulations and provisions established under this act: and every such governor, guardian, and treasurer, is hereby required to obey the directions of the visitor, touching the several matters aforesaid: and, in any act shall be required to be done by a justice, such visitor, if not a justice, or his deputy, or assistant, shall apply to some neighbouring justice to do the same: and every visitor or deputy visitor shall be deemed to be serving the office of constable, and all parochial offices, and serving upon juries at the assizes or quarter sessions, so long as he continues in that office; and a certificate under the hand of the justice acting for the limit wherein he executes such office, in the form in sched. No. 10. shall be evidence of his serving the office.

By s. 11. if two-thirds in number and value as aforesaid, of the owners or occupiers of lands, within any *single parish, &c.* adopting the provisions of this act, &c. shall desire to have a visitor appointed, and shall send to the justices of the limit three persons properly qualified for the office, the justices shall appoint one of such persons in the manner before directed, concerning parishes, &c. so united as aforesaid.

12. By s. 12. the guardians shall recommend to the justices one of their own body to be treasurer of the poor-house; and the two justices of the limit may appoint the guardian so recommended, or any other of the guardians whom they shall think better qualified, to that office, in the form in sched. No. 7. or to the like effect; which treasurer shall give sufficient security, to the satisfaction of the justices, to the other guardians, their successors, for his duly accounting for the money which shall be paid to his hands; and shall keep the accounts, receive the money to be sent by each parish, &c. and discharge the several bills and expenses which shall be allowed and ordered to be paid by the guardians, at every monthly meeting; and shall lay his accounts before the guardians, at every such meeting, for their approbation; and shall, once in every year, within 14 days before the *Michaelmas* quarter sessions of the peace

for the county, &c. where such poor-house shall be situate, make out a just account of the expenses attending the same, distinguishing them under the several heads herein specified; and also an account of the number of poor persons, distinguishing their age and sex, contained in every such house at the time of making such account, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding; which shall be laid before the visitor, and signified under his hand, if he approve the same, and afterwards be transmitted to the clerk of the peace, or town-clerk, of such county, &c. before or at the time of the said quarter sessions, and be by him laid before the court there for their inspection: and every such treasurer shall be allowed such annual sum, not exceeding 10*l.* as the visitor, if not a guardian, shall think fit; and if no such visitor, as two justices for the limit shall appoint.*

13. By *s.* 13. as often any vacancy in any of the offices aforesaid, &c. shall be filled up by another appointment in the same form as the first.

14. By *s.* 14. the offices of guardian, governor, visitor or treasurer, shall determine in Easter week next after the respective persons shall be appointed thereto, on the day upon which the public meeting for such parish, &c. shall be held, when the persons, who have a right to recommend another person to the justices, to be appointed to such office, shall either agree with the persons who held the same to continue in such office, or shall proceed to recommend others, in the manner hereinbefore directed, as if such person had died.

15. By *s.* 15. if within any such limit, wherein any poor-house shall be situate, there be no acting justice, or only one, or if the justice or justices who usually act in that limit shall be absent, or by any means incapacitated to act, any justice of any other limit may act in all such cases.

16. By *s.* 16. the justices, within their respective limits, may appoint special or privy sessions for executing the several powers of this act, causing proper notices to be given of the time and place of holding the same, to the several justices, peace-officers, and guardians of the poor, within such limits; and also may adjourn any such privy sessions, to be again holden at such time and place as they shall judge most proper, the like notice of every such adjournment being given.

17. By *s.* 17. the guardians, &c. shall provide a suitable house or houses, with proper buildings and accommodations thereto, when wanted, either by erecting new ones on land to be purchased or rented by them for that purpose, altering old ones, or hiring buildings for the purpose; and shall fit up and dispose the same, with the advice and approbation of the visitor, if any, in such manner as shall be most conducive to the general purposes of this act, at the expence of such parish, &c. in the proportions hereinafter mentioned; and provide such utensils and materials as they shall think necessary for their employment, according to the true intent of this act.

Where poor-houses to be situated.

18. By *s.* 18. the several poor-houses or workhouses to be built or provided shall be situate within the parish, &c. for which they shall be used, if single parishes, &c. and if several parishes, &c. be united, shall be built or

* See 41 Geo. 3. c. 9. s. 3. post Art. 57.

provided within one of the parishes, &c. so united, and not in any other parish, &c. without the consent of three-fourths in number and value as foreshaid, of such owners and occupiers of lands, &c. within the same, first obtained, qualified as hereinbefore mentioned, assembled at a public meeting to be holden in the manner, and upon the like notice hereinbefore directed for public meetings.

19. By s. 19. all the houses, buildings, and lands, to be hired or rented under the authority of this act, shall be hired or rented in such manner, or such term or terms, and on such conditions, as are specified in the form of agreement in schedule No. 4.; and all such houses, &c. shall be free from all parochial and parliamentary taxes, except such taxes, and to such amount, as they were assessed at the time they were first taken and applied for the purposes of this act.

Buildings to be aid for by the guardians. 20. By s. 20. when any such buildings shall be agreed to be erected, repaired, or fitted up, at the expence of the parish or parishes, &c. the expences thereof, and of the purchase of the land necessary for that purpose, shall be

aid by the guardians of such parish or parishes, &c. united for those purposes, in the proportions to be settled by the persons, and in the manner directed by the agreement to be made as aforesaid: and the visitor and guardian of any such parish, &c. when such expences, or their proportion thereof, shall amount to 100*l.* or upwards, may borrow the same at interest, and secure such money by a charge upon the poor rates of such parish, &c. in sums not exceeding 50*l.* each, for the greater ease in dis-

charging the same, in the form in schedule No. 11. or to the like effect; which charge shall continue upon the said rates until the money so borrowed, and all interest for the same, shall be fully paid: and the said guardians and their successors shall duly pay and keep down the interest of such money, as the same shall become due; and when the principal shall be called for, they may borrow it from some other person or persons; and the same shall be secured to the person advancing the same, by an assignment of such security indorsed on the back thereof, in the form in sched. No. 14. or to the like effect: and the poor's assessments shall continue at the same rate they were when such poor-house was first established under the authority of this act, until the debt so contracted, and the interest thereof, shall be fully discharged: and the said visitor and guardian, in order to expedite such payments, shall, as soon as the savings in the poor's accounts amount to a sum sufficient to pay off one of the sums which shall have been borrowed, pay off such sum, and in like manner as to all succeeding savings, until the whole debt shall be discharged. See 42 Geo. 3. c. 74. Post Art. 59. and 43 Geo. 3. c. 110. s. 1, 2. Arts. 60, 61.

Visitors and guardians to be incorporated. 21. By s. 21. the visitor and guardian for the time being of every parish, &c. or of the parishes, &c. so united, shall be one body politic and corporate, and be called by the name of visitor and guardian, or visitors and guardians, of the poor for the parish, township, or place of

in the county, &c. of or of the united parishes, townships, or places of and in the county, &c. of as the case shall be; and shall by that name sue and be sued, and accept, take, and hold, by purchase or lease, any lands, tenements, or hereditaments of inheritance, or for lives or

years, or for years determinable on the death of any life or lives, not exceeding in any city or town one acre, and not exceeding in the open country twenty acres of statute measure, for the site of a house or houses to be built, and for lands to be occupied, for the purposes of this act; and the said corporation shall accept, take, and hold, all voluntary grants and donations of lands, tenements, or hereditaments of inheritance, or for lives or years, or for years determinable on lives, or of personal property which shall be made to them for the use and benefit of the poor within such respective parishes, &c.

Incapacitated persons empowered to sell lands, &c.

22. By s. 22. all bodies politic, corporate, or collegiate, corporations aggregate or sole, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other trustees whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, idiots, femmes-covert, or other person or persons, and all femmes-covert, who are or shall be seised, possessed of, or interested in their own right, and every other person or persons whosever, who are or shall be seised, possessed of, or interested in any lands, tenements, or hereditaments, which shall be necessary to be purchased or rented for the purposes of this act, may contract for, sell, and convey or lease the same, or any part thereof, in manner aforesaid, not exceeding the quantity aforesaid, unto the said visitor and guardians, their successors and assigns, or to such person or persons as they shall appoint, for the use and benefit of such poor-house, and the poor persons within such parishes, &c. and for all other the purposes of this act.

Money paid for such lands, &c. to be laid out in the purchase of other lands, &c. to be settled to the same uses.

23. By s. 23. all sums of money to be paid to any bodies politic, corporate, or collegiate, corporations aggregate or sole, feoffees in trust, executors, administrators, husbands, guardians, committees, or other trustees whatsoever, for or on behalf of any infant, lunatic, idiot, femme-covert, or other cestuique trust, or to any person or persons whose lands are limited in strict settlement, for the purchase of any lands or buildings as aforesaid, shall, in case the same exceed the sum of 20*l*. by such bodies politic, &c. be laid out in the purchase of lands, tenements, and hereditaments, in fee simple, and conveyed to or to the use of such bodies politic, &c. to, for, upon, and subject to such uses, trusts, limitations, remainders, and contingencies, as the lands for or in respect whereof such purchase-money shall be so paid as aforesaid were limited, settled, and assured, at the time such purchase was made, or so many of such uses as shall be then existing, and capable of taking effect; such purchases and settlements to be made at the expence of the respective parish, or of the several parishes so uniting, in the proportions aforementioned, and charged by the respective guardians of such parishes, together with the purchase-money, in their accounts; and in the mean time, and until such purchase or purchases shall be made, the said money shall be placed out by such bodies politic, &c. in some of the public funds, or on government or real security, in the name of two or more persons, the one to be named by the party or parties interested therein, and the other by the guardian, if it respects a single parish only, and by the visitor, if it respects several parishes so united, and the interest arising from such funds or securities, and also the annual rent, where the said premises shall be rented, shall

to such person or persons as would, for the time being, be entitled to the rents and profits of such lands or buildings so to be purchased and settled, pursuant to the tenor and true meaning of this act.

24. By s. 24. the poor persons sent to every such house, shall be maintained therein at the general expence of the respective parishes, &c. according to the terms and in the proportions directed and prescribed by this act; and the treasurer, with the assistance of the governor of every such house, shall provide all necessary provisions for the maintenance of such poor, and keep and account thereof; and there shall be a meeting of the guardians of every such parish, &c. at such house or houses, on the first Monday in every month, at ten in the forenoon, or on such day and hour, in the first week of every month, as the said guardians shall at their first meeting appoint, to state, examine, and settle the accounts for the preceding month; and at such meeting the said treasurer shall produce, fairly written, one account of the debt incurred in the preceding month, for utensils and materials for the purpose of manufacture, and for furniture, alterations, or repairs of the buildings, and also for the salary or allowance to the governor or treasurer, and servants (if any) in which account the rent of such house or houses, buildings, and premises, if the same shall be rented, shall be charged in the month next after such rent becomes due, according to the terms of the agreement for taking the same; and the said account, when agreed to, shall be signed by the said guardian attending such meeting. And the sums to be paid by each of such parishes, &c. on that account, shall be settled at such meeting, in proportion to the sums paid by each such parishes, &c. on account of their poor, on the first of three years next preceding the date of such agreement (to be ascertained at such first monthly meeting, in the manner to be directed by the said agreement so to be entered into for uniting as afore-mentioned according to the form and table in sched. No. 15.) and in like manner and in the like proportions, at every succeeding monthly meeting; and the money shall be then, or within one week after, paid into the hands of the said treasurer, to be by him applied in discharge of the several articles and debts in such account; and the said treasurer shall also at the next meeting produce, fairly written, one other account of the victuals, clothing, and other necessaries, for the use and maintenance of the poor, and of the governor, at such house or houses, and all other expenses; which shall be then accounted for, and proportioned to the said guardians according to the number of persons which have been sent from each of the said respective parishes, &c. and for which they shall have resided in such house or houses, within such time according to the mode or form, and table, and in the manner for which also mentioned in the said schedule, No. 16.; and the sum for each parish, &c. shall be specified at the foot of such account, which, when settled and agreed to, be signed by such guardians, or by part of them, and be afterwards inspected by the visitor, if not objected to, and allowed by him if he shall approve thereof; and in case the same shall be made in payment of the respective sums so proportioned to each parish, &c. in respect of any such parish, &c. for seven days after the

same shall be so settled and proportioned, and the money demanded, any justice for the limit, upon complaint made to him upon oath of such default, may levy the said respective sums by distress and sale of the goods and chattels of any guardian, &c. making such default; and, at the end of every year, the account shall be finally closed, and the balances paid and received, according to the mode in the sched. No. 16.

Penalty on persons refusing to deliver up poor rate, &c. 25. By s. 25. The churchwarden or overseer of the poor of any parish, &c. who shall have the custody of the poor rates, assessments, or accounts, for such parish, &c. shall produce the same to the persons who shall be nominated, in the agreement contained in the said schedule for uniting parishes, on every request made by them for that purpose, after four days notice thereof, in order to enable them to ascertain the expences relative to the poor, on a medium of three years, according to the true intent and meaning of this act, or in default thereof shall forfeit 5*l.* for every such refusal.

26. By s. 26. *the guardian not attending each monthly meeting* hereby directed to be holden, or sending some substantial inhabitant of such parish, &c. to attend and answer the payments for him, in case he shall be prevented by sickness, or unavoidable accident, from attending in person, shall, for every such neglect, forfeit not exceeding 5*l.* nor less than 40*s.*

27. By s. 27. *the guardians* where any such poor-house shall be provided, purchased or agreed to be erected, may inclose from any waste or common land, or ground lying near or adjoining thereto, with the consent and approbation of the lord of the manor, and the major part in value of the freeholders or persons having right or common thereupon, signified under their hands and seals, or any part or portion of such waste or common land, not exceeding ten acres, for the purpose of building upon, or occupying, cultivating, and improving the same, for the use and benefit of such poor-house, and the poor persons within the parish, &c. or united parishes, &c.

28. By s. 28. every person sent to any house provided under this act, shall, at the time of his or her entering such house, deliver to the governor thereof, or to his assistant, if any, an order signed by one of the guardians of the parish, &c. from which such person shall come, for the admission of such person into the form, or to the effect in the schedule No. 12.; such order to be kept by the governor, and entered by him in a book for that purpose.

29. By s. 29. no person shall be sent to such poor-house or houses, except such as are become indigent by old age, sickness, or infirmities, and are become unable to acquire a maintenance by their labour; and except such orphan children as shall be sent thither by order of the guardian or guardians of the poor, with the approbation of the visitor; and except such children as shall necessarily go with their mothers thither for maintenance.

How poor children are to be provided for. 30. By s. 30. all infant children of tender years, and who, from accident or misfortune, shall become chargeable to the parish or place to which they belong, may either be sent to such poor-house as aforesaid, or be placed by

the guardian or guardians, with the approbation of the visitor, with some reputable person in or near the parish, &c. to which they belong, at such weekly allowance as shall be agreed upon between the parish officers and such person, with the approbation of the visitor, until such child shall be

' sufficient age to be put into service, or bound apprentice to husbandry, some trade or occupation ; and a list of the names of every child so placed out, and by whom and where kept, shall be given to the visitor, who shall see that they are properly treated, or cause them to be removed, and placed under the care of some other person, and when every such child shall attain such age, he or she shall be so placed out, at the expence of the parish, &c. to which he or she shall belong, according to the laws in being: provided that if the parents or relations of any poor child sent to such house, or so placed out as aforesaid, or any other responsible person, shall desire to receive and provide for any such poor child, and signify the same to the guardians at their monthly meeting, the guardians shall dismiss such child from the poor-house, or from the care of such person as aforesaid, and deliver him or her to the parent, relation, or other person so applying as aforesaid ; provided also, that nothing herein contained shall give any power to separate any child under the age of seven years, from his or her parent or parents, without the consent of such parent or parents.

31. By s. 31. all *idle or disorderly* persons, who are able, but unwilling, to work or maintain themselves and their families, shall be *prosecuted* by the guardians of the several parishes, &c. wherein they reside, and *punished* in such manner as idle and disorderly persons are directed to be by 17 Geo. 2. c. 20. and if any guardian shall *neglect to make complaint* hereof, against every such person, to some neighbouring justice, within ten days after it shall come to his knowledge, he shall, for every such neglect, *forfeit* not exceeding 5*l.* nor less than 20*s.* ; one moiety to the informer, and the other moiety as the other forfeitures are hereinafter directed to be applied.

32. By s. 32: where there shall be in any parish, &c. any *poor person able and willing to work, but who cannot get employment*, the guardian of such parish, &c. on application made to him on behalf of such poor person, shall agree for the labour of such poor person, at any work or employment suited to his or her strength and capacity, in any parish, &c. near the place of his or her residence, and cause such person to be properly maintained, lodged, and provided for, until such employment shall be procured, and during the time of such work, and receive the money earned by such work, and apply it in such maintenance, and make up the deficiency, if any ; and if the same shall happen to exceed the money expended in such maintenance, to account for the surplus, which shall afterwards, within one calendar month, be given to such poor person who shall have earned such money, if no further expences shall be then incurred on his or her account to exhaust the same. And in case such poor person shall refuse to work, or run away from such work, complaint shall be made thereof by the guardian to some justice in or near the said parish, &c. who shall enquire into the same upon oath, and on conviction, commit such offender to the house of correction, to be kept to hard labour for not more than three calendar months, nor less than one.

33. By s. 33. the guardian shall *provide*, at the expence of the parish, &c. suitable and necessary *clothing* for the persons sent by him to such poor-house as aforesaid ; and in case of his neglect, the governor or one of the guardians of every such house shall complain to some neighbouring justice, who shall summon him to appear before him to answer the said complaint, and direct him to provide such clothing as shall to such justice appear necessary ; and if such guardian shall make default in pro-

viding such clothing, within ten days after such direction, such justice may direct the governor of such poor-house, or the guardian so making such complaint, to provide the same, and to demand from such guardian so making neglect the expences of such clothing; and in default of payment thereof upon demand made, such justice may levy the same, and the costs attending the recovery thereof, by distress and sale.

34. By s. 34. the rules and regulations contained in the schedule hereunto annexed, shall be duly observed and enforced at every poor-house or workhouse to be provided by virtue of this act, with such additions as shall be made by the justices of the limit at some special session; provided that such additions shall not be contradictory to the rules and regulations established by this act, and provided that the same be not repealed by the justices at their quarter sessions; and the governors of every such house shall cause the same to be printed in plain legible characters, and fixed up in some conspicuous part of every such house.

Jurisdiction of justices, where guardians refuse relief, &c.

35. By s. 35. any justice, on complaint made upon oath, on the behalf of any poor person belonging to any parish, &c. that the guardian, upon application made to him, hath refused him proper relief, and after enquiring into the condition and circumstances of such poor person upon oath, may either order him or her, by writing under the hand of such justice, some weekly or other relief, or direct such guardian to send such poor person to the poor-house, in case he or she shall appear a fit object to be kept and provided for there; which order shall be complied with, or sufficient cause shewn to the contrary, before such justice, by such guardian, within two days after he shall receive the same, (and every person receiving weekly relief shall wear the badge directed by the 8 & 9 Will. 3. unless directed otherwise by a justice, upon proof of very decent and orderly behaviour;) or if it shall appear to such justice that the person on whose behalf such complaint is made, is able and willing to work, but wants employment, such justice may order the guardian to procure him or her maintenance and employment in the manner hereinbefore directed; and if any guardian shall, upon due notice of any such order, neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of 5*l.*; or if it shall appear to such justice that the person on whose behalf such complaint is made, is an idle or disorderly person, and has not used proper means to get employment, the justice, after examining such person, and hearing the whole circumstances of the case, may commit such person to the house of correction, for any time not exceeding three calendar months, nor less than one; or if it shall appear to such justice, upon inquiry as aforesaid, that the husband or father of such person is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses, or places of bad repute, does not maintain his wife or children, and suffers them to be reduced to want, such justice may, in like manner, commit the husband of such poor woman, or the father of such poor child, to the house of correction, for any time not exceeding three calendar months, nor less than one.

36. By s. 36. when any application shall be made to a justice for the relief of any poor person within any parish, &c. for which a visitor shall be appointed, such justice shall not summon the guardian to appear before him, unless application shall have been first made, by the person so complaining, to the guardian, and if he refuse redress, to the visitor, (it being

part of his duty to adjust matters of that sort) who shall order relief, if he think it necessary, either within or out of the poor-house, as he shall judge right; but if sufficient relief shall not be so ordered, the poor person on whose behalf such complaint shall be made, shall be redressed by such justice in the manner hereinbefore directed.

37. The guardian and visitor of a parish, which had adopted the provisions of 22 Geo. 3. c. 83. upon application to them for relief, directed the applicant to be received into the poor-house, notwithstanding an order of one justice directing pecuniary relief out of the poor-house; and the defendant, as guardian, having been convicted in a penalty for disobeying such order, (which conviction was confirmed at the sessions;) the court quashed the conviction, holding that it was the especial duty of the visitor to adjust matters of such sort as the present, viz. whether relief should be afforded in or out of the poor-house, saying, that otherwise the whole policy of the act would be defeated. *Rex. v. Laughton*, 2 M. & S. 324. *Supp.* 40.

38. By s. 37. out of the penalty inflicted upon the guardian for disobeying the order of a justice for relief, &c. so much thereof as the justice convicting such offender shall direct to be paid to such poor person to whom such relief was ordered shall be paid accordingly, and the remainder applied as the other penalties are hereby directed to be disposed of.

Poor persons afflicted with sickness, &c. or dying, at a distance from their parish. 39. By s. 38. if any poor person shall be retarded on his or her passage through any parish, &c. in which he or she has no legal settlement, by reason of his or her meeting with any accident, or being afflicted with any dangerous sickness or bodily infirmity, without the means of subsistence, or of proceeding to the place of his or her settlement, the guardian living near the place where such distressed object shall be, shall, upon notice thereof, forthwith provide lodging, and suitable nourishment and assistance, (and also clothing, if necessary) for such person, until he or she can be removed with safety; and when such person shall be in a state of health fit to be removed, shall take such person to some neighbouring justices of the county, &c. where such person was found, who shall examine him or her upon oath, touching the place of his or her settlement, and make an order for his or her removal thither, if they think fit. And the parish officer who shall so receive and provide for such person as aforesaid, shall make a charge of the expences attending the same, which, on being allowed and certified by the justices before whom such poor person shall be so taken, or some other neighbouring justices within the limit where such person was found, shall be paid by the guardian of the parish, &c. where such poor person shall be settled, in case the same can be discovered, and shall happen to be within that county, on demand made thereof, and on the production of such allowance and certificate as aforesaid, or in default of payment, the same shall be levied upon the goods and chattels of any such guardian so making default, after due summons, by warrant from a justice having jurisdiction there; and if any poor and sick person, circumstanced as aforesaid, shall die before he or she can be so examined, or if any poor person shall be found dead in any parish or place to which he or she did not belong

the guardian of such parish or place respectively shall, and is hereby required, in every such case, to cause such person to be buried in the parish, &c. where he or she so died, or was found dead, and shall make a charge of the expences attending the same, which shall be allowed and certified by a justice, after examining into the place of his or her settlement, and shall be paid by the guardian of the parish, &c. where such person shall appear to have been settled, if the same shall be within that county; but in case the settlement of such poor persons respectively, cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of such county, or place, where such person was so relieved, on the production of such allowance and certificate, out of the county or public money to be collected within his limit, and allowed to such treasurer in his accounts.

40. By s. 39. *nothing* herein contained shall extend to *affect the settlement of any person*, or to *give any illegitimate child born in any poor-house or workhouse established under this act, a settlement in the parish or place in which such workhouse or poor-house shall be situated*, (but every such child shall be considered as settled in the parish or place to which the mother belongs) or to affect any of the provisions or regulations established by any act of parliament for the management of any particular house of industry, or workhouse, in any part of this kingdom.

41. By s. 40. if any *poor person* sent to such house or houses shall *embezzle* or wilfully waste any of the goods or materials committed to his or her care, or shall take or carry away, without permission of the governor, any goods or materials provided for the use of such house, or belonging to any person residing there, complaint shall be made thereof upon oath, to some neighbouring justice, who shall hear the same, and the party accused; and, upon conviction, may commit such offender to the house of correction, to be kept to hard labour for not longer than six calendar months, nor less than two. *

42. By s. 41. when any guardian or other person shall *entice, take, convey, or remove*, or cause or procure to be enticed, taken, conveyed, or removed, any *poor person from one parish or place to another*, which shall adopt the provisions of this act, without an order of removal from two justices for that purpose, every person so offending shall, for every such offence, *forfeit* a sum not exceeding 20*l.* nor less than 5*l.*

43. By s. 42. if any *visitor, guardian, or governor*, shall *sell or furnish any materials, goods, clothes, victuals, or provisions, or do any work in his trade* for the use of any workhouse, poor-house, or poor persons, within any parish, &c. for which he shall be so appointed to act, or be concerned in trade or interest with any person who shall sell, provide, do, or furnish the same, he shall for every such offence, *forfeit* a sum not exceeding 20*l.* nor less than 5*l.* on being duly convicted thereof by a justice.

44. By s. 43. *the guardians of the poor of any parish, &c.* adopting the provisions of this act, with the approbation of the persons within such parish, &c. qualified as hereinbefore mentioned, obtained at a public meeting held for that purpose, may *sell or dispose of any house, cottage, or building, erected or purchased for the use of any poor person, at the expence of such parish, &c. and apply the money arising therefrom for the purposes of this act; and also may remove, by order from a justice, the person or persons*

Guardians, with the approbation of the parishioners, may sell houses provided by the parish for

the poor hereof. inhabiting the same, or any other house or dwelling rented or provided at the expence of such parish, &c. if he, she, or they refuse to quit, after receiving 14 days notice for that purpose.

45. By s. 44. nothing in this act shall affect any parish, &c. which shall not agree to adopt the provisions herein contained, in the manner hereby directed and prescribed.

Penalties how to be recovered and applied. 46. By s. 45. all penalties inflicted by this act shall be recovered before one justice of the jurisdiction where the offender dwells; who shall, upon conviction, in default of payment, after due summons and demand made, cause the same to be levied by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of any justice having jurisdiction where such offender dwells, rendering to the said offender the overplus (if any) after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then any such justice may commit such offender to the house of correction, for any space not exceeding six calendar months, nor less than one; and every such penalty, if not hereby otherwise directed to be disposed of, shall be paid to the treasurer of every such house established under the authority of this act, to be applied by him towards defraying the monthly expences of victuals, beer, firing, and other necessary provisions for the poor within such house.

47. By s. 46. any person aggrieved by the act of any justice out of sessions, in or concerning the execution of this act, may appeal to the next general quarter sessions of the peace for the county, riding, liberty, division, precinct, or district, wherein such act was done, giving eight days notice thereof to the party against whom the complaint shall be made, and giving security by recognizance, to be acknowledged before a justice, with a sufficient surety, to pay the costs attending such appeal, if the matter shall be determined against the appellant; and the justices at such quarter sessions shall hear and determine such appeal, and award costs as they shall see just cause to do; whose determination shall be final, and shall not be removed by certiorari.

48. By s. 47. this act shall be deemed to be a public act.

49. For the schedule referred to, and the forms, &c. therein contained, and for the rules and regulations, see the act.

Two-thirds in number and value of persons who attend any public meetings, and signify their approbation, &c. sufficient. 50. By 33 Geo. 3. c. 35. whenever two-third parts in number and value of such qualified persons only, as have actually attended, or may hereafter actually attend, at such public meeting, as mentioned in the 22d Geo. 3. c. 83. have there signified, or may hereafter there signify, their approbation of the provisions in the said act contained, and their desire to adopt them, according to the form and manner prescribed by the said act, such approbation and desire so signified, or to be hereafter so signified, as aforesaid, have been, and shall be, a sufficient compliance with the above-recited provision of the said act.

51. By s. 2. reciting, that the duty of guardian, has been found, in some cases, to be more than one person could properly execute: it is enacted, that whenever two-third parts in number and value as aforesaid, of the said persons so qualified, and actually attending at such public meeting as aforesaid, shall recommend to the justices, three persons qua

lified for guardians for such parish, &c. and shall fix the salary to be paid to such guardian, according to the manner and form prescribed by the said act; and shall also, at the said public meeting, by writing under their hands, signify their opinion to the said justices, that more than one guardian of the poor is necessary for the same, and shall express their desire that two of the three persons so recommended, may be appointed guardians, the said justices may appoint two guardians accordingly.*

52. By s. 3. all such casual poor as would be entitled to relief from any one of such incorporated parishes, &c. mentioned, shall be relieved by all the said parishes, &c. conjointly, and in the same respective proportion as they are directed to contribute for the general purposes of the said act.

Directors and acting guardians of the poor, incorporated by act of parliament, may, in certain cases, make such assessments as may be necessary for the support and maintenance of the poor, &c. notwithstanding they may exceed the assessments limited by the respective acts.

53. By 36 Geo. 3. c. 10. s. 1. the directors and acting guardians of the poor within any hundred, town, or district, in England, incorporated by any act of parliament for the relief or maintenance and employment of the poor, or for any other persons, by whatsoever name they are described, to whom is given, by any such incorporating act, the power of appointing the sums to be assessed on the several parishes, &c. within their respective hundreds, &c. for the maintenance of the poor, and other the purposes of such act, at any of their annual, quarterly, or other general meetings, whenever the average price of wheat at the corn market in Mark Lane, London; for the quarter immediately preceding such annual, quarterly, or other general meeting, shall have exceeded the average price of wheat at the same market, during those years from which the average amount of the poor's rates was taken upon the passing of the several incorporating acts respectively, may assess the several parishes, &c. within their respective hundreds, &c. which now are or usually have been charged to the poor's rates, in such respective sums of money as the said directors and acting guardians, or such other persons as aforesaid, shall think necessary for defraying the expences attending the support and maintenance of the poor for the current quarter, and for paying the interest of the money borrowed and due by virtue of the said respective acts, and of any debts which may have been incurred since the first day of January, 1795, in the maintenance of the poor, and for other the purposes of the said acts, notwithstanding such sums of money so to be assessed should exceed the amount of the assessments limited by such respective acts of parliament, to be assessed on the respective parishes, &c. within such incorporated hundreds, &c. in any one year: Provided

Assessments by virtue of this act to be made, &c. as those under the incorporating acts.

always, that the sums to be assessed, and the assessments to be made by virtue of this act, in each respective incorporated hundred, shall be assessed, and paid in the same manner, and subject to the same regulations and powers of appeal, and with the like remedies for compelling payment thereof, as the sums to be assessed, and the assessments to be made, by virtue of the several incorporating acts: Provided also, that the sums to be assessed by

* See 41 Geo. 3. c. 9. s. 1. Post Art. 55

of this act, upon any parish, &c. shall be in the same rates and tions as the assessments which have hitherto been made and levied tue of the said act or acts incorporating the several hundreds, &c,

ess- in which such parishes, &c. are respectively situated:
 ex- And provided also, that, from and after the first day of
 mble January 1798, the sums to be assessed by virtue of this
 as at act, on any parish, &c. shall never exceed, in any one
 raised, year, the amount of double the sum at present raised by
 virtue of any incorporating act now existing.

By s. 4. this act not to extend to places where houses of industry ovided under 22 Geo. 3. c. 83. or under any special act.

mal 55. By 41 Geo. 3. c. 9. s. 1. if in any parish which shall have
 ms. adopted the provisions of the 22 Geo. 3. c. 83. either alone
 or in conjunction with any other parish, it shall be the opi-
 f two-thirds in number and value of the owners or occupiers of lands,
 ualified as by the said act is required, present at a public meeting,
 unt to notice given in the church or chapel of the said parish, on the
 y preceding, that one guardian is insufficient for carrying into due
 ion the said act, and the same be certified by two persons present
 a meeting, in writing under their hands, to two justices for the district
 ison within which such parish shall be situate, together with the
 of four or more persons qualified for such office of guardian, the
 stices may, by writing under their hands, according to the form
 ibed in the schedule to the said act, appoint so many of the said
 s to be guardians as they shall think fit.

ians 56. By s. 2. the guardians present at a monthly meet-
 ke an ing held according to the directions of the 22 Geo. 3. c. 83.
 m the with the approbation of the visitor, who shall sign the
 var- same, may make an order on the churchwardens or over-
 r over- seers, or collector of the poor's rates, or one of them, for
 &c. for so much money as shall be necessary for the purposes of
 money the said act; and if the person or persons to whom the order
 ll be shall be directed, neglect to pay the same to the treasurer
 ry. or guardian to whom the same is made payable, within se-
 ven days after demand, any justice within the division or
 t, upon proof on oath of such default, may issue his warrant for
 g the said sums by distress and sale of the goods and chattels of the
 erson or persons, in like manner as by the said act is provided in case
 -payment by the guardians.

By s. 3. any two such justices, by application from two-thirds iber and value of the owners, &c. in any parish, qualified as by the
 t is directed, may appoint a treasurer for the poor-house in such
 with a salary not exceeding 10*l.* according to the form pre-
 l in the schedule to the said act, in the case of united parishes.

By s. 4. any person aggrieved by the act of any justice out of ses-
 in the execution of this act, may appeal to the next general quar-
 sions of the county, &c. wherein such act was done, giving eight
 notice thereof to the party against whom the complaint shall be
 and giving security by recognizance before a justice, with a suf-
 surety to pay the costs attending such appeal, if the matter shall
 ermined against him; and the justices at such quarter sessions
 ear and determine such appeal, and shall award such costs as they

shall see just cause so to do, which determination shall be final, and shall not be removed by certiorari.

*Guardians,
with the con-
sent of the
persons to
whom payable,
to pay off
yearly not
less than one-
twentieth part
of the money
borrowed.*

59. By 42 Geo. 3. c. 74. the guardians of any parish, who have erected any poor-house or workhouse under the powers of the 22 Geo. 3. c. 83. shall, with the consent of the several persons to whom the same shall be due, yearly pay off any part of the money borrowed under the power of the said act, not being less than one-twentieth part thereof, besides the interest payable on the sum remaining undischarged; and in case such sum so to be paid off shall not in any one year be sufficient to discharge any one of the notes for 50*l.*, issued pursuant to the directions of the said act for securing the money borrowed under the authority thereof, the same shall remain in the hands of the overseers of such parish, until it amount to a sufficient sum to pay off any of the said notes.

60. By 43 Geo. 3. c. 110. s. 1. so much of 22 Geo. 3. c. 83. s. 20. as requires that the assessments for the relief of the poor shall continue at the same rate, as they were when any poor-house or workhouse was first established under the authority of the said act, until the debt contracted, and the interest thereof, should be fully discharged, is repealed.

61. By s. 2. such assessments shall and may from time to time be diminished to such amount as shall be deemed proper: Provided that the guardians, for the time being, of every such parish, shall, yearly pay off or provide for a twentieth part at least of any monies which shall have been borrowed for the purpose aforesaid, under the powers of the 22 Geo. 3. c. 83. and also shall duly keep down the interest of all monies which shall be so borrowed.

62. By 49 Geo. 3. c. 124. s. 5. the rules, &c. appointed by 22 Geo. 3. c. 83. to be observed in poor-houses established by the authority of that act, may, by two justices at any petty sessions, be directed to be observed and executed in any parishes within their respective divisions and districts, as fully as in those incorporated by the said act.

63. By 50 Geo. 3. c. 50. noticing the 22 Geo. 3. c. 83. and the last cited clause of 49 Geo. 3. it is enacted, that any two justices, within their respective limits, may at any special session direct the rules and regulations in the schedule to 22 Geo. 3. c. 83. contained, or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poor-houses, or any houses set apart for that purpose, although there should be no master or mistress to superintend the same, of any parish or place within their respective divisions or districts, as fully as the said rules are to be observed within the parishes adopting the provisions of the 22 Geo. 3. c. 83. and two such justices, in any special session, may add to and alter the rules and regulations which shall at any previous special sessions have been ordered to be observed, provided that no addition or alteration to be made by such justices shall be contradictory to the rules and regulations established by the said 22 Geo. 3. c. 83. and provided that the same shall not be repealed by the justices at their quarter sessions; and for carrying into execution such rules and regulations in every parish and place where the same shall be established by virtue of this act, every justice shall for that purpose have the powers by the said 22 Geo. 3. c. 83. vested in visitors of the poor; and all church-wardens and overseers, within their respective parishes and townships,

shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor.

64. By s. 2. that *persons contracting* for the maintenance of the poor of any parish or place, shall, with respect to all such things as they shall contract to perform and provide for the poor, be *subject to the jurisdiction and orders of justices* in like manner in all respects as overseers; and that every order of any such justice upon any person so contracting, may be enforced by such means as the same might have been enforced against any overseer; and every person so contracting, who shall neglect to obey any such order, shall be punishable by the like penalties, to be levied in the same manner as in cases of neglect of the orders of justices by overseers.*

65. By s. 3. the *justices* in any such special session as aforesaid, upon the application of the overseers of any parish or place, or of the major part of them, *may appoint the keeper of the workhouse* of any such parish or place to be the governor thereof, and the keeper so appointed, until the justices in any such special session shall revoke such appointment (which they are hereby empowered to do) shall have the powers, and perform the duties by the said 22 Geo. 3. c. 83. vested in and imposed upon governors of the poor.

66. By s. 4. if any person sent to any poor-house or workhouse shall *embezzle*, or wilfully waste, spoil, or damage, any of the clothing, goods, or materials, committed to his or her care, or shall take or carry away, without permission of the overseer or keeper of the said workhouse, any clothing, goods, or materials provided for the use of such poor-house, or of any of the poor therein, complaint thereof may be made upon oath to one justice acting for the district or division in which such parish shall be situate; and such justice may, upon conviction, *commit the offender to the house of correction*, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days.

67. By s. 5. any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as is by the act directed for the breach of the rules and orders to be enforced under the 22 Geo. 3. c. 83.

Justices empowered to order relief in certain cases limited.

68. By 59 Geo. 3. c. 29. s. 2. when any complaint shall be made to any justice of the want of adequate relief, by or on the behalf of any poor inhabitant of any parish in which the relief of the poor is under the management of guardians, governors, or directors, appointed by virtue of special or local acts, such justice shall not proceed therein or take cognizance thereof, unless it shall be proved on oath before him that application for such relief hath been first made to, and refused by, such guardians, &c. and in such case the justice to whom the complaint shall be made may summon the overseers, or any of them, to appear before any two justices to answer the complaint; and if it be proved on oath to the satisfaction of such justices that the party on whose behalf the complaint is made is in need of relief, and that adequate relief hath been refused by such guardians, &c. such justices may make an order under their hands and seals for such relief as they shall think necessary, (reference

* See 45 Geo. 3. c. 54. also 50 Geo. 3. c. 50. s. 2. under title *Overseers and Relief of the Poor*.

being also had by such justices to the character and conduct of the applicant,) provided that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given for or extend to any longer time than one month from the date thereof, provided that any justice may make an order for relief in any case of urgent necessity, to be specified in such order, so as such order shall remain in force only until the assembling of such guardians, &c. to which such case shall relate.

One justice may order temporary relief in cases of urgent necessity.

69. By s. 29. if it shall be made appear to any justice to whom any such application for relief shall be made, that the visitor of the parish or united parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the applicant, and that application for relief hath been made to the guardian, and hath been refused, such justice may summon the guardian before him, and make such order as the case shall require, in like manner as in cases where application hath been made to the visitor in the manner by the 22 Geo. 3. c. 83. directed.

See Addenda P.Q.

LUNATICS.

1. By 48 Geo. 3. c. 96. various regulations are enacted for the management of County Asylums.

2. By s. 17. upon the application of the overseers of any parish situate within the county where such lunatic asylum is established, the justices may issue warrants for the conveyance to such place of any lunatic, insane person, or dangerous idiot, chargeable to such parish; and such justice shall at the same time make an order for payment by such parish of such weekly sum to the treasurer of the said asylum as may be fixed upon by the visiting magistrate, for the maintenance, medicine, clothing and care of such person.

3. By 59 Geo. 3. c. 127. two justices may require, by a written order, the overseers to bring before them any lunatic, &c. chargeable to any parish, and having examined the case, calling in the aid of a medical man if necessary, may remove him to a lunatic asylum or other licensed place for the reception of lunatics, and make an order for payment of the expenses of removal, and of the weekly sum for his support upon the parish to which he belongs, and the overseers shall deliver a certificate from the medical man to the keeper of such asylum; such lunatic not to be removed thence without an order of justices.

4. By 48 Geo. 3. c. 96. s. 18. and 59 Geo. 3. c. 127. s. 3. overseers neglecting to give information of such lunatic pauper to a justice within seven days after knowledge of the fact, to forfeit not more than 10*l.* nor less than 40*s.*; one moiety to the informer, the other to the treasurer for the use of such asylum, after the charges of recovering the same are deducted

on the whole penalty ; and the conviction may be on the oath of one
ness.

5. By 51 Geo. 3. c. 79. s. 1. justices may, in their discretion, refuse to
ue warrants for conveying lunatics, &c. to asylums, such persons not
ing actually dangerous, specifying their reasons in writing to the over-
rs.

6. By s. 2. an appeal is given to the next quarter sessions, ten days
tice being given.

7. By s. 3. every justice who shall have issued, or refused to issue,
ch warrant on the application of the overseers, shall make regular re-
rns to the next general quarter sessions of all such cases brought be-
re him, stating, in all cases of refusal, the reasons.

8. By s. 4. the overseers of any parish, on making ap-
plication to any justice, shall produce to him a certificate
duce certi- in writing from some medical person, of the state and de-
ate of a me- gree of lunacy of the person on whose behalf such applica-
cal person tion shall be made ; and such justice may causesuch lunatic,
the state of &c. to be visited by such medical person as he shall think
e lunatic. fit, and examine the said medical person upon oath as to
e state of such lunatic, &c. and order such sum to be paid to such me-
ical person for his attendance as may seem reasonable, to be paid by the
erseers of the parish making such application.

9. By s. 5. the medical superintendant of every such asylum as afore-
aid shall make regular returns to the justices at the general or quarter
essions, at least once in every year, of the state of all persons committed
his care under the authority of the 48 Geo. 3. c. 96. and of this act.

10. By s. 6. on the regular discharge of any pauper from any such asy-
um, the necessary expences attending his removal shall be borne by the
arish in which such pauper shall be legally settled, and being allowed by
o justices, shall be paid by the overseers of such parish.

11. By s. 7. no bastard child born of any lunatic, &c. in any such asy-
um, shall thereby gain a settlement in the parish in which such asylum
all be situated, but shall be settled in the mother's parish.

12. By s. 20. where the settlement of lunatics, &c. apprehended un-
er 14 Geo. 3. c. 49. cannot be discovered, they may be sent to the county
ylum, or some secure licensed place for the reception of lunatics.

13. By s. 21. provided that lunatic asylums shall not be liable to re-
sive lunatics, &c. chargeable to any place not contributing to the county
ite, &c.

14. By s. 27. when insane persons charged with murder, and having no
istance, are detained, two justices may enquire into their settlement,
d make an order of maintenance on the parish to which they belong ;
d if no settlement can be ascertained, then an allowance is to be made
it of the county rate of the county where they were apprehended.

15. By 55 Geo. 3. c. 46. s. 7. the weekly rate at which parishes are to
ontribute for the maintenance of their lunatic paupers in county asylums
ay be increased by the justices at their annual or general quarter ses-
ons.

16. By s. 8. the justices for any county, at their petty sessions, may
sue warrants to overseers to return true lists of all lunatics and dan-
erous idiots, being paupers, within their parishes, specifying the name, sex,
d age, of each, and whether dangerous, and how long disordered ; and
e overseers shall, on the receipt of such warrant, forthwith

prepare and return such lists accordingly: and such lists shall be verified, on oath, before the justices, at their petty sessions, as aforesaid, and accompanied with a certificate from a medical practitioner, as to the state of each lunatic, &c.; and any overseer to whom any such warrant shall have been delivered, neglecting to prepare such list, or to return the same at the time and place by such warrant fixed, with such certificate, as aforesaid, or to verify such list on oath, shall, for every such offence, be subject to such fine as overseers are subject to for neglect of duty, under stat. 33 Geo. 3. c. 55. and such fine shall be levied in the manner in the said act directed; and the justices aforesaid shall cause the said lists to be forthwith transmitted to the clerk of the peace, or his deputy, to be by him laid before the justices for the county, at their next general quarter sessions, or general annual sessions: and such overseer shall defray the necessary expenses of the examination of such lunatic, &c. by a medical practitioner out of the poor rates of the parish to which such lunatic belongs; or, where the legal settlement of any such lunatic shall not have been ascertained, then out of the poor rates of the parish in which such lunatic shall reside.

MAINTENANCE OF RELATIONS.

- I. JURISDICTION OF JUSTICES AND FORM OF THE ORDER.
- II. WHO ARE CHARGEABLE.
- III. PENALTY FOR DISOBEDIENCE.
- IV. MAINTENANCE OF DESERTED FAMILIES.

I. Jurisdiction of the Justices and Form of the Order.

1. The justices of the district, in which the party on whom the order of maintenance was made dwells, alone have jurisdiction. *Rex v. Reeve*, 2 *Buls.* 344. i. 362.
2. They cannot delegate this authority, but must set the rate of maintenance themselves. *Rex v. Humphries*, *Sty.* 154. i. 363.
3. The justices cannot remove poor persons from their own parish to that where their relations live who are to maintain them. *Shermanbury v. Bolney*, *Comb.* 279. i. 363.
4. But a rate ought to be made on the person liable to maintain, at so much a week. *Rex v. Jones, Foley*, 53. i. 364.
5. And formerly this jurisdiction must have been exercised at a general quarter sessions, and be so stated to have been in the order

an order, stating that it was made at a general sessions, was to be defective. *Rex v. Charnock*. i. 364.

But now, by 59 Geo. 3. c. 12. s. 26. any two justices for the county in the sufficient person (who is to relieve) dwells, may, in any petty session, make such assessment and order for the relief of every poor, old, lame, impotent, or other poor person, not able to work, upon and father, grandfather, mother, grandmother, or child (being of sufficiency) of every such poor person as may, by virtue of the said act, be by the justices in their general quarter sessions; and every such assessment and order of two justices, in any petty sessions, shall have the same force and effect as if the same were made by the justices in their quarter session, and the disobedience thereof be punishable in like manner.

Although the jurisdiction of the sessions be original, yet, where an appeal was made upon an appeal by the parish officers against an order of the poor person, it was held good. *Rex v. Kempson*.

It seems that the person in whose favour the order is made must be adjudged poor. *Mendes de Breta, Ltd. Raymond*, 699. i. 360.

And there must be an express adjudication in the order, that the person is chargeable. *Rex v. Tripping*, 16 Vin. Ab. 424. i. 366. So also, the order must adjudicate that the pauper is lame, or unable to work; for if the adjudication be only, that the pauper is "a destitute condition," *non constat*, but that such destitute condition may arise from refusal to work. *Rex v. Gullely, Fo.* 47. i.

And it is not sufficient to state, in the complaining part of the order, that the pauper is "deserted" and "impotent," but must be an express adjudication that the person is impotent. *Litton*. i. 366.

It is not sufficient to state, by way of recital, that the person is believed to be poor, impotent, &c. *Rex v. Pennoyer*. i. 366.

The order must state that the person on whom it is made is a person of sufficient ability. *Rex v. Halifax*. i. 366.

And relief by him must be ordered in positive terms not by recommendation. *Rex v. Pennoy. ibid.*

So also it must shew that the person on whom it is made is within the jurisdiction of the court. *Rex v. Woodford*. i. 367.

An order made on a feme covert is bad. *Custodius v. Julius*, 83. i. 369.

On an order of maintenance directing the party to pay so much weekly, the money is due and payable at the commencement of every week. *Fearnley*, 1 T. R. 316. i. 418.

18. The order may have a retrospective operation, as to pay so much for the time past as well as in future. *Rex v. Joyce*, 16 *Vin. Ab.* 423. i. 372.

19. The order may be made to pay "till the court shall direct the contrary." *Jenkins' case*, *Salk.* 531. i. 365.

20. But see *Rex v. Pennoyer* i. 366. from which it seems that the order should state positively for what time the relief is to continue.

II. What Relations are chargeable, and penalty for disobedience.

21. By 43 *Eliz. c. 2. s. 7.* the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justice of that county where such-sufficient persons dwell, or the greater number of them at their general quarter sessions, shall be assessed, upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein.

22. By *s. 11.* such penalties and forfeitures shall go and be employed to the use of the poor of the same parish, and towards a stock and habitation for them, and other necessary uses and relief, and shall be levied by the said churchwardens and overseers, or one of them, by warrant from any two justices, or mayor, or alderman, or head officer of city, town, or place corporate, respectively within their several limits, by distress and sale; or in defect thereof, any two such justices of the peace, and the said aldermen and head officers within their several limits, may commit the offender to the common gaol, till the said forfeitures shall be paid.

23. By 11 & 12 *Will. 3. c. 4. s. 7.* if any popish parent of protestant children, in order to the compelling such his or her protestant child to change his or her religion, shall refuse to allow such child a fitting maintenance suitable to the degree and ability of such parent, and to the age and education of such child, upon complaint thereof made to the chancellor, he may make such order therein as shall be agreeable to the intent of this act.

24. By 1 *Ann. s. 1. c. 30.* upon a similar application in the case of Jewish parents, the chancellor may make such order for the maintenance of protestant children as he shall think fit.

25. By 32 *Geo. 3. c. 45. s. 8.* persons neglecting to use proper means to get employment, &c. spending their money in an improper manner, and not applying a due proportion of it to the maintenance of their wives and families, by which they become chargeable, &c. are to be dealt with as idle and disorderly persons. See title *Vagrant*, post.

26. The 43 *Eliz.* extends only to natural relations, not to those by marriage. *Rex v. Kempson*, i. 373, &c. &c. and see *dict. Lord Kenyon*, in *Tubb v. Harrison*, 4 *T.R.* 118. i. 376.

27. Therefore a man cannot be ordered to maintain his son's wife or widow. *Rex v. Kempson*, i. 373. *Rex v. Benoire*, *ibid.* *Rex v. Dunn*, i. 372.

28. Nor his wife's mother. *Rex v. Munden*, *Str.* 190. i. 372. *Fut. 305. i. 373. S. C. semble.*

29. It seems from two cases that, during the life-time of the wife, the husband ought to provide for her children by a former husband, but not after her death. *Rex v. Clentham*, *Fo.* 39. i. 371. *Rex v. St. Botolph's, Aldgate*, *Fo.* 42. i. 372. But see *contra Woodford v. Lilburn*, i. 375. Also *Tubb v. Harrison*, 4 *T. R.* 118. i. 376.

30. In a later case where the second husband maintained such children, it was held to be a good consideration for a promise by them when they come of age to repay the expence of their maintenance respectively; especially where the second husband was a man of small substance, and the children had a competent provision to receive when they came of age, which was to accumulate for them in the mean time, and the husband made no application to chancery for an allowance out of the fund. *Cooper v. Martin*, 4 *E. R.* 76. *Rex v. Clentham*, i. 377. *Tubb v. Harrison*, i. 376.

31. At all events, if the husband take such children into his house, and they become part of his family, he shall be deemed to stand in *loco parentis*, and be liable, where a contract is made by his wife for their education. *Stone v. Carr*, 3 *Esp. N. P.* 1. i. 689. See also *Cooper v. Martin*, 4 *E. R.* 76. i. 377.

32. If an order be made on a grandmother, being of good ability, to maintain her grandchild, and she afterwards marry, her husband is liable to the order. *Draper v. Glenfield*, 2 *Bulstr.* 345. i. 367.

33. Provided such husband had an estate in marriage with the grandmother, or obtained one afterwards in her right, but not otherwise. *Westminster v. Gerrard*, i. 368.

34. And by the death of the wife, the husband is discharged. *Gerrard's case*, *ibid.*

35. *Sed vid. dict. per Holt*, chief justice; That although the relationship is determined by the death of the wife, yet, by an equitable construction of the statute, the husband shall continue to be considered as the grandfather of the poor person. *Rex v. Barney*, *Comb.* 105. i. 368. *in notis.*

36. If the person on whom the order is made be a grandfather, and give a bond to indemnify the parish as to his son and his family, the condition of the bond is broken if either his son or any of his family, though born after the obligation, become chargeable. *Walham v. Sparkes*, *Skyn.* 566. i. 370.

37. If the father be living, and unable to maintain his child, an order may be made on the grandfather. *Rex v. Joyce*, 16. *Vin. Abr.* 123. i. 372.

38. A man cannot be ordered to maintain his wife under 43 *Eliz. c. 2*; if he run away and desert his wife and family may be punished under a different statute. *Rex v. Davis* Mod. 268. i. 371.

39. It seems that an order cannot be made for the maintenance of a bastard. *Budworth v. Dumpley, Salk. 123.*

40. The person upon whom an order of maintenance may be indicted for disobeying it. *Rex v. Robinson, Burr. 795*

Persons who desert their families shall be deemed incorrigible rogues, and those who threaten to run away, vagabonds.

41. By 7 *Jac. 1. c. 4. s. 8.* reciting that many persons being that they, having children, have some hope of relief the parish wherein they dwell, and being able to and thereby to relieve themselves and their families nevertheless run away out of their parishes, and leave families upon the parish; it is enacted, That all persons so running away shall be taken and deemed incorrigible rogues. And if either such man or woman able to work, shall threaten to run away and leave families, the same being proved by two witnesses oath before two justices, the persons so threatening by the said justices, be sent to the house of correction (unless he or she can put in sufficient sureties for the discharge of the parish,) there to be dealt with as a sturdy and wandering rogue, to be delivered at the said assembly or meeting, or at the quarter-sessions and not otherwise.

42. By 5 *Geo. 1. c. 8.* after reciting that divers persons go away from their places of abode into other countries, places, and sometimes out of the kingdom, some leaving their wives, a child, or children, and some leaving a child or children upon the charge of the parish or place where such child or children was or were or last legally settled, although such persons have some estates, should ease the parish of their charge in whole or in part, it is enacted That the churchwardens or overseers of the poor of such parish or place where any such wife, &c. shall be so left, by warrant from two justices, may seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order towards the discharge of the parish or place where such wife, &c. are left, for the support of such wife, &c. which warrant being confirmed at the next quarter-sessions, the justices there may make an order for the said churchwardens or overseers to dispose of such goods and chattels by sale or otherwise or so much of them as the court shall think fit, and to receive the proceeds and profits, or so much of them as shall be ordered by the court out of his or her lands and tenements, for the purposes aforesaid.

43. By *s. 2.* the churchwardens and overseers shall be accountable to the justices at the quarter-sessions for the money received by virtue of this act.

44. The order of two justices must state how much of the annual rents of the fugitive should be seized by the parish-officers.

the subsequent order of confirmation by the sessions should specify a *quantum* of relief to be appropriated out of the goods and rents seized, and limit a period for such appropriation *Stable v. Iron*, 61 *E. R.* 163. i. 385.

45. A common soldier billeted in a different parish from that in which his family resides, is not a deserter of his family, although he be able and refuse to maintain them, and they become chargeable to the parish. *The Soldier's case*, 1 *Wils.* 331. i. 385.

46. See further as to the punishment of persons deserting their families, &c. title *Vagrant*, *post*.

MANDAMUS.

1. In what cases it will lie to compel the making and allowance of a poor-rate, the appointment of overseers, &c. See titles *Poor-rate*, *Overseers*.

2. In one case where, by a local act, certain guardians of the poor were appointed and vested with the powers and rights of churchwardens and overseers of that parish, and also with authority to appoint a treasurer and clerk, it was held that a mandamus would not lie to compel them to restore to the office of treasurer and clerk a person whom they had, in consequence of some new arrangement as to the offices of clerk and treasurer, superseded. *Guardians of St. Nicholas, Rochester*, 4 *M. & S.* 324.

3. Where the founder of an eleemosynary corporation by deed, made by virtue of an act of parliament, granted that the same should be for the sustentation of poor, needy, and impotent, people, and especially of such as should be maimed in the wars in the service of her majesty, to consist of a master and twelve brethren, to be appointed by him and his heirs; and that it should be governed by the rules and ordinances as were annexed, or at any time thereafter made by him; and afterwards he made certain ordinances,—that the people of certain towns and lordships should be preferred to the places aforesaid before any other, according to a certain station, and that the bishop, dean, and archdeacon of Worcester, should be visitors, and should correct, punish, and reform, all abuses

and offences to be committed by the master and brethren, and that his ordinance be truly executed according to its meaning; and afterwards the heir of the founder, upon a vacancy of one of the brethren, appointed a person to succeed, who was a soldier maimed in the wars, and poor and impotent, but not belonging to either of the towns or lordships mentioned in the rotation, against which appointment three persons belonging to the town next in the order of rotation, who were poor and impotent, and some of them wounded in the service, appealed to the visitors, on the ground that the appointee was ineligible, and that there were others besides themselves belonging to the said town, who were eligible: held that such appeal well lay, and therefore the court granted a mandamus to the visitors, who had heard the evidence in such appeal, but declined to act therein, to proceed and determine the appeal. *Rex v. Bishop of Worcester*, 4 M. & S. 415.

MILITIA AND SOLDIERS.

I. VAGRANCY.

II. RELIEF.

III. SETTLEMENT AND MISCELLANEOUS.

1. By 32 Geo. 3. c. 44. s. 7. every soldier and mariner wandering abroad and begging, shall be deemed a rogue and vagabond within the meaning of 17 Geo. 2. c. 5.

Every soldier, &c. on carrying his discharge to the nearest magistrate, shall receive a certificate, &c. of settlement, on producing which, shall not be deemed a vagabond.

2. But by 43 Geo. 3. c. 61. s. 1. every soldier or mariner, duly discharged out of any regiment, and every sailor duly discharged out of any ship or vessel belonging to his Majesty's navy, carrying his discharge by the third day at the latest from the date thereof to the mayor or chief magistrate of the city, town, port, or corporate place, nearest to, or within fifteen miles from, the place where he shall have received his discharge, shall receive from such mayor, &c., a certificate under his hand, stating the place to which the person so discharged is desirous of going, being his home or place of legal settlement; together with the time to be fixed, not exceeding 10 days for every 100 miles; and so in proportion, except for a reasonable cause, to be expressed in such certificate: and such person producing to such persons as shall lawfully demand to see the same such discharge, and

ificate as aforesaid, and being in his route accordingly, both as land road, shall not by reason of asking relief, be deemed to be a vagabond, provided that every such discharge shall bear the true name as to the time when, and the place where it was given, and shall be sum or sums, if any, which were paid to such soldier or sailor name and place.

3. By s. 2. the wife of any non-commissioned officer or soldier ordered for foreign service, making due proof of her not being permitted to embark with her husband, before the mayor, &c. of the city, &c. nearest to or within fifteen miles from the place at which the regiment to which she belongs, is ordered to embark, or if any other city, &c. at which the regiment shall happen to be on its march under orders for embarkment shall receive from such mayor, &c. a like certificate, under his hand and corporate seal of such city, &c. shall not, by reason of asking relief, be deemed to be a rogue or vagabond.

s. 3. in case of accident or sickness duly proved, which shall the person having such certificate from proceeding on his or her according to the terms prescribed therein, the chief magistrate of her city, &c. where such person shall be, or shall arrive, may issue a new certificate, stating therein the true reasons for granting the same, and containing the like provisions as are hereinbefore described, and the same to be the same to the former certificate.

s. 4. certificates or passes granted as heretofore, from the admiralty or war-office, to discharged sailors, soldiers, or marines, or families of sailors, soldiers, or marines, serving abroad, or lately returned, to carry them to their respective homes, shall have the same effect for all purposes whatever as the certificates herein permitted to be issued by the magistrates as aforesaid; and the terms of the same may be varied in each instance which shall require it, by a new certificate from the magistrate in manner hereinbefore mentioned.

3. By the 58 Geo. 3. c. 92. (which repeals the 51 Geo. 3. c. 106. the 52 Geo. 3. c. 120 and c. 27. except as to all cases of any offences committed, or fraud practised against the same, and as to any prosecutions for any such offences or frauds, and also as to the paying, reimbursing, or accounting for any money under the provisions thereof) s. 2. the secretary at war is empowered to issue passes to be filled up by any justice, for granting allowances to enable the wives, and children of soldiers desirous of returning to their own homes, in cases specified in this act; and in any other cases in which the secretary at war shall think, under the special circumstances, that it is expedient to give such allowances, and to make such regulations in relation to the issuing and filling up such passes, and the certificates and orders upon which the same are to be issued, as the secretary at war may think fit.

7. By s. 3. the commanding officer of every regiment or detachment about to embark for foreign service, or in which any soldiers shall die on service, leaving any widows or children destitute of the means of returning to their respective homes, shall cause a return to be made out, of the names of the wives, widows, and children of the soldiers belonging

women are to be disposed of. thereto, who are desirous of returning to their homes, and are unable to do so without the assistance of the allowance authorised by this act; stating in such return the several places of residence to which they are desirous of proceeding, and shall give to every such wife or widow, a duplicate of such part of such return as shall apply to her and her children, certifying thereon that she is the widow, wife, or reputed wife, and the children of a soldier in his regiment or detachment, and distinctly stating in the body of such duplicate a certificate, that no allowance whatever is to be made thereupon, but that it is only given for the purpose of identifying such wife, widow, or children before the justice, and of enabling him to fill up such pass as shall be allowed by the secretary at war.

Duplicate passes to be taken to justices to be filled up and signed.

8. By s. 4. each wife or widow to whom such duplicate shall have been delivered, shall forthwith take it to some neighbouring justice, who shall fill up and sign such an engraved copper-plate form of pass, bearing his Majesty's arms, and signed by the secretary at war, or by an officer in his department, and sealed with his official seal, as shall have been transmitted to such justice by the secretary at war, or as shall be so transmitted upon the application of such justice, who is to fill up the blanks in such pass, and certify the same, and make out a route in the proper column for such wife, widow, and children, (if any) specifying the place to which she is going and her route, and to deliver such pass to her in exchange for the duplicate certificate of the commanding officer, in order that she may receive the allowance authorised by this act, not exceeding per mile one penny halfpenny for herself, and one penny for each child.

Overseer, upon production of the pass, to pay soldiers' wives an allowance at so much per mile, to the next place.

9. By s. 5. upon production of such pass to any overseer of any place through which such woman shall proceed according to the route specified in such pass, he shall, out of any money in his hands applicable to the relief of the poor, pay her an allowance, not exceeding the rate per mile specified in such pass as aforesaid, for the number of miles to the next city, town, or place to which she may be going, not exceeding eighteen miles, and he shall indorse on such pass the money so paid, and take a receipt from the woman, signed with her hand or with her mark, specifying the regiment or detachment to which her husband belongs, or, if a widow, did belong, so as that the description on the receipt may correspond with the description in the pass so produced to him as aforesaid.

Overseer to be repaid by collector of excise.

10. By s. 6. the sum so advanced by such overseer shall, upon production and delivery of such receipt to the collector of excise of the district within which such overseer acts as such, or any person officiating for such collector, be repaid by him to such overseer, for the use of the fund for the relief of the poor; and such overseer shall give a receipt for the money so paid, which, with the receipt of the woman, shall be taken as cash in the payment of duties of excise received by such collector.

In case of sickness, women entitled to allowance.

11. By s. 8. if, by reason of any sickness or accident, any such woman or children shall have been left at any place of embarkation, or at the last quarters of any regiment or detachment, or at any place on the march therefrom to the place of embarkation, and have been omitted in any such

return, the officer commanding where such women or children shall have been so left, is authorised to make out the return prescribed by this act, of such women and children, and to transmit it to the war-office, and to give to every such woman such duplicate as aforesaid; and also to transmit any such further return as may be necessary under any special circumstances of the case, to the secretary at war, which return and duplicate are to have the same force as if done in the manner and by the person specified in this act.

12. By s. 9. every such woman shall, at the last place of her receiving any allowance under this act, antecedent to her arrival at her home, or port, or place of embarkation, deliver up such pass to the overseer of the poor advancing such allowance, who shall deliver the same to the collector of excise, to be by him transmitted to the war-office.

13. By s. 10. if by contrary winds or want of a vessel ready for sailing, or by the sickness of herself, or any of her children, or by any other reasonable cause, any such women shall be detained more than one night at any port or place of embarkation, or at any place on her journey, from the signing of the pass to her arrival at such port or at her home, she may apply to any justice, who is required thereupon to enquire into the facts of the case, and if satisfied of the truth thereof, to give her an order to receive from the overseer of the poor, if on her journey, and if at her port or place of embarkation, then from the district paymaster the sum of 1s. a day, for the maintenance of herself, and 6d. a day for each child, for whom an allowance is specified in the pass; and such payment is to be made to her so long as she shall be unavoidably detained and no longer; and such order, with the receipt of such women, and the certificate of some justice of such detention, and the period thereof, shall be a sufficient voucher for every such payment which shall be allowed and finally discharged in manner aforesaid.

14. A common soldier billeted in a different parish from that in which his family resides, is not a vagrant within the statutes 7 Jac. 1. c. 4. s. 8. and by 17 Geo. 2. c. 5. s. 1. as a person who has run away, or threatened to run away and leave his family, although his family become chargeable to the parish, and he be able to maintain them. *The Soldier's case*, 1 Wils. 331. i. 385.

II. Relief.

15. By 43 Eliz. c. 3. every parish shall be charged with a weekly sum towards the relief of sick, hurt and maimed soldiers and mariners as the justices in sessions shall appoint, so as no parish be rated above 10d. nor under 2d. weekly; so as the total sum in any county where there shall be above fifty parishes do not exceed 6d. for every parish.

16. This mode of provision, however, is not usually had recourse to, and such persons are generally provided for either by the particular parishes to which they belong, or by the Greenwich and Chelsea Hospitals.

*17. By 43 Geo. 3. c. 47. (repealing 33 Geo. 3. c. 8. 34 Geo. 3. c. 47. 35 Geo. 3. c. 8. and 36 Geo. 3. c. 114. except as far as relates to the reimbursement and recovering of money paid under those acts, and to any fines or forfeitures) if any person serving or enrolled in the militia of England as a *non-commissioned officer or drummer, or as a balloted man or substitute, hired man or volunteer*, shall, when called out into actual service, leave a family unable to support themselves, the *overseer of the parish, tything, or township* where the family of such person dwell, shall, by order of one justice, pay to the family of every such non-commissioned officer, &c. out of the poor-rates of such parish, &c. a *weekly allowance*, according to the ordinary price of labour in husbandry within the said county, riding, division, district, or place where such family dwell, by the following rule; viz. any sum not exceeding the price of one day's such labour, nor less than 1s. for each child born in wedlock, and under the age of ten years; and for the wife of such non-commissioned officer, &c. whether he shall or not have any child, any sum not exceeding the price of one day's such labour, nor less than 1s.; and in every parish, &c. where the money arising by such rates shall not be sufficient for the purpose aforesaid, a new rate or rates shall be made for raising a sum sufficient for that purpose.

18. By 51 Geo. 3. c. 20. s. 20. no allowance shall be granted to the wives or families of any men raised after this act, but of such as are balloted.

19. By 43 Geo. 3. c. 47. s. 3. the justices assembled at any Michaelmas general quarter sessions for any county, &c. in England, raising any militia, shall settle and regulate the rate of allowance to be paid to the families of militia-men resident within such county, &c.; and every such rate of allowance so settled, shall be binding upon all justices making

* For the relief of the families of Volunteers when embodied, &c. see 44 Geo. 3. c. 38. and for the relief of those belonging to the militia of London, see the statutes 36 Geo. 3. c. 92. and 39 Geo. 3. c. 82. s. 10, 11, &c. But the relief of families of militia-men in the Tower Hamlets Militia seems to depend upon the above statute 43 Geo. 3. c. 47. The 26 Geo. 3. c. 107. provided for the relief of militia-men's families, excepting the militia of the Tower Hamlets. The 37 Geo. 3. c. 25. for regulating the Tower Hamlets Militia makes them subject to the provision of 26 Geo. 3. c. 107. The 42 Geo. 3. c. 90. s. 153. however totally repeals the 26 Geo. 3. c. 107. adding, that all the clauses in the said act 42 Geo. 3. c. 90. in relation to any matter to which 26 Geo. 3. c. 107. was in force, shall be put into force as to all such matters, so far as the same are not contrary to 37 Geo. 3. c. 25. Provided that nothing contained in the said 42 Geo. 3. c. 90. shall be construed to repeal any of the clauses of 37 Geo. 3. c. 25. other than such as are in or by 37 Geo. 3. c. 25. made subject to the regulations of 26 Geo. 3. c. 107.; and the 37 Geo. 8. c. 25. does not contain any clause for the relief of families of militia-men in the Tower Hamlets. But the above act 43 Geo. 3. c. 47. makes provision for that relief generally as to all militia-men's wives, without any exception as to those of the Tower Hamlets, and by sect. 24. extends its provisions expressly to all parishes, tythings, and places.

order for the payment of allowance under this act in such county, until any other rate of allowance shall be settled.

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20. By s. 4. no allowance shall be paid to the wife, or family of any militia-man, until he shall have joined the corps to which he belongs, or for longer than he shall remain embodied in actual service, nor in any case in which the wife, in respect of whom such relief is demanded, shall follow the corps in which her husband serves; or shall leave her child or children, if any, or depart from her home, unless under certificate of any neighbouring justice, or the overseer of the parish in which such relief shall be given, authorising such departure for a time specified therein for the purposes of harvest, or obtaining by work a better support for her family, or unless for the purpose of going to reside in the parish, &c. for which her husband

is, in case at the time of her husband being called out into actual service she shall be residing in any other parish, &c.

. By 53 Geo. 3. c. 81. s. 1. no wife or family of any person serving in militia, and entitled by reason thereof to relief, shall forfeit the same by reason of her having followed, or accompanied, or been with her husband and with the regiment in which he shall serve, or by reason of her neglecting her child or children, or departing from her home; but she shall, upon her returning to her home, be entitled from the time of her return to have such relief as is directed by the laws in that behalf.

. By 43 Geo. 3. c. 47. s. 5. no allowance, &c. to the family of any substitute, hired man, or volunteer, who at the time of his enrolment falsely represented that he had no wife or family, or having more at the time of his enrolment, that he had only one child: Provided that where a substitute, &c. undertakes and make provision for the maintenance of other children, to the satisfaction of any justice to whom application shall be made under this act for the relief of such family, such justice shall order the allowance to be paid in respect of the wife of such substitute, &c. and of one child of such family under the age of ten years.

. This section applies as well to the case of a substitute, &c.

having a wife and child, or children, falsely represents that he has none, as to one who, having more than one, falsely represents that he has only one, and therefore an order of relief made on the false representation first mentioned was disallowed. *v. Preston*, 13 E. R. 313. *Supp.* 50.

. The deputy lieutenants ought to make every inquiry before approving of a substitute; and if he have more than one child, ought to be rejected; but if the deputy lieutenants do take him, he then becomes a legal substitute, and the parish for which the substitute serves must bear the expence of maintaining the family of the substitute. *Rex v. Willis*, 6 T. R. 179: i. 439.

. And it seems that the family of a substitute in service should be relieved, although he were neither approved of nor enrolled. *v. Ledbury*, 7 T. R. 558. i. 441.

26. By s. 6. no allowance, &c. to the family of any non-commissioned officer or drummer, reduced for misconduct to a private, such reduction being certified by the commanding officer or adjutant to the clerk of the general meetings, and by him to the treasurer of the county, &c. in the militia of which such non-commissioned officer or drummer serves, and by such treasurer to the overseers of the parish, &c. or township in which such family shall dwell, and every such allowance shall cease from such reduction being certified to the overseers, notwithstanding any order of any justice to the contrary; and every such family requiring relief, shall thenceforth be relieved as casual poor only.

27. By s. 7. no allowance, &c. to the family of any substitute, who shall marry, during the time of his being called out into actual service, unless such marriage shall take place with the consent of the commanding officer of the corps, to which he belongs, such consent to be certified under the hand of such commanding officer.

28. By s. 8. the families of non-commissioned officers, drummers, or balloted men, or of substitutes, hired men, or volunteers, shall not be removeable, or sent to any workhouse or poorhouse by reason of receiving any such allowances; nor shall any persons, to whose families any such allowances shall be paid, be thereby deprived of their legal settlements elsewhere, or of their right of voting for the election of members to serve in parliament.

29. By s. 9. every such weekly allowance to the family of any non-commissioned officer or drummer, shall be repaid to the overseers, by the treasurer of the county, &c. and every weekly allowance to the family of any non-commissioned officer or drummer, in any other county, &c. than that for which he serves, or to the family of any private man in any other parish, &c. than that for which he serves, shall be reimbursed as hereinafter mentioned.

30. By s. 10. in all cases where a certain number of militia-men are raised for any county, together with or including any city, borough, town, or place in England, being a county or district of itself, not contributing to the general county rate, the several sums of money raised for the relief of the families of non-commissioned officers and drummers shall be borne by such county, and such city, &c. in such proportions as the respective numbers of militia-men, raised in such county, and by such city, &c. bear to each other.

31. By s. 11. the treasurers of any such county, city, borough, town, and place shall demand, receive, and make payment of such proportions and sums of money, the one to the other of them, as the case may require.

32. By s. 12. if any dispute arise as to the proportion or any other thing relating thereto, or to such payments, the lord lieutenant of the said county, and in his absence the deputy lieutenants, or any three of them, at any meeting, shall settle the same, whose decision shall be final; and the said lord lieutenant and deputy lieutenants, or any three of them, shall require and inspect the accounts of every such treasurer, for the purpose of settling their said proportion.

33. By s. 13. in all cities, towns, liberties, divisions, and places, contributing to the general county rates, and having no treasurer yet appointed, the justices for every such city, &c. in case there are any, and if not, the justices of the county wherein such city, &c. shall be, shall, at their general quarter sessions, appoint a treasurer, and assess upon every parish, tything, township, hamlet,

In places not contributing to the county rate, where no treasurer is appointed,

the justices in quarter sessions shall appoint one, and make assessments, &c. vill, within the liberties of such cities, &c. in such proportions as the rates heretofore made for the relief of the poor have usually been assessed, and shall cause to be paid, out of the money collected and levied for the relief of the poor of every such parish, &c. into the hands of such treasurer, such money as may be, in their discretion, necessary for the purposes of this act; and such treasurer shall dispose of the same accordingly, and shall be and act in all respects, in respect to the provisions of this act, the same as the treasurer of peculiar districts where a public stock is now raised.

34. By s. 14. where any allowance shall be paid to the family of any private militia-man in any other parish, &c. than that for which he serves, the justice who shall make any order for the relief of such family, shall certify the same under his hand, and in such certificate direct the overseers of the parish, &c. for which such private militia-man serves, to reimburse the money so paid to the overseer, who shall have advanced the same in pursuance of the order before mentioned.

Where such reimbursement cannot be conveniently procured from the overseers, repayment may be demanded from the treasurer of the place where the allowances were paid. 35. By s. 15. where, by reason of the distance of any parish, &c. in which any allowance under this act shall be so paid to the family of any private militia-man serving for any other parish, &c. from such other parish, &c. where the same shall be situate in any other county, &c. the overseers of the poor, entitled to the repayment of such allowances, under any such order and certificate as aforesaid, cannot conveniently procure the repayment thereof from the overseers of the parish, &c. for which such private militia-man shall have served or be serving, such overseers may demand repayment of such allowances from the treasurer of the county, &c. in which the parish, &c. where such allowances shall have been paid, is situate; and every such treasurer shall, upon production of such order and certificate as aforesaid, forthwith reimburse such allowances to the overseers demanding the same.

36. By s. 16. every such treasurer who shall so reimburse any such overseers as aforesaid, shall deliver or transmit an account of such money so reimbursed, signed by one justice for the county, &c. where the family receiving the allowance dwells, to the treasurer of the county, &c. in the militia whereof such militia-man serves, and the treasurer to whom such account shall be delivered, shall pay to the treasurer delivering such account, the money so by him reimbursed, and shall be allowed the same in his accounts.

37. By s. 17. every treasurer who shall repay to any treasurer of any other county, &c. any such allowances, on any such signed account as aforesaid, shall transmit such signed account, and also an account of all monies so repaid by him in pursuance thereof, to the justices for the county, at the next or general quarter sessions of the peace, or any subsequent sessions; which accounts so received shall be allowed by the justices at such sessions, who shall forthwith, as to all allowances so repaid in respect of the families of any private militia-men, make orders for the overseers of the poor of the respective parishes, &c. for which such private militia-man shall respectively serve or have served, to pay the same to the treasurer of such county, &c. out of the poor-rates of such respective parishes, &c. within fourteen days next after the receipt of such orders.

38. *By s. 21. accounts of all allowances paid under this act, in respect whereof any reimbursement shall be directed by this act, shall be made up at the end of every successive six months, or shorter period, from the time of the first commencing the payment thereof, and shall be signed by the justices granting certificates for the reimbursement thereof, or by some other justices of the same county, &c. within one month after the respective periods up to which such accounts shall be made up, and the money due on such account shall, as soon as the same can be done, be demanded of the overseers of the poor of the parish, &c. or treasurers, required to make such reimbursement; and no such sum of money shall be demandable, unless the same shall have been so first certified within one month as aforesaid, and delivered to the overseer of the parish, &c. or treasurer, by whom such reimbursement is to be paid, within three months after such certifying thereof as aforesaid.

Where more than a wife and three children shall become chargeable, the overseers of the poor may provide another man to serve in room of the father, whose pay shall commence from the discharge of the man in whose room, provided, &c.

39. By s. 22. it is further enacted, that in every case in which the family of any private militia-man in England, when called out and embodied for actual service, shall become chargeable in respect of any greater number than the wife and three children, under the age of ten years, the overseers of the poor of the parish, &c. for which such man serves, or in which his family resides, may provide another able man between the ages of 18 and 35 years, and having no wife or any child under the age of ten years, to serve in the stead of the man having such family as aforesaid; and the commanding officer of the corps to which such men shall belong, upon such other man being approved of, and enrolled as a fit and able man, and joining at the headquarters of the said corps, shall discharge the man in whose stead such other person shall be so enrolled: provided that the pay of every such person so provided, shall commence only from the day of the discharge of the man in whose stead he shall have been provided: Provided also, that no

such private militia-man shall be discharged at any other period of the year, than between the 1st Nov. and 25th March.†

Payments made by overseers under this act shall be allowed as other expences on account of the militia; and if any overseer shall not pay money ordered by a justice, he shall forfeit 5l.

40. By s. 23. all payments made by any overseer under this act, shall be allowed in their respective accounts, in like manner as other expences incurred on account of the militia; and if any overseer shall, on demand made in pursuance of any order or certificate of any justice for the payment of any money by virtue of this act, and production of such order or certificate to him, neglect to pay the money so directed to be paid, he shall, for every such neglect, forfeit 5l., to be recovered upon the oath of one witness, or by the confession of the party accused, before the justice making such order, or any other justice of the peace of the county, &c. where the offence shall be committed; which justice shall, upon any information exhibited or complaint made in that behalf, summon the party accused, and upon

* The intermediate clauses of this statute contain special provisions on this subject respecting the militia of Exeter, Bristol, and Plymouth.

† Vid. ante Art. *Res v. Willis*, i. 439.

due proof thereof as aforesaid, give judgment for such penalty, to be levied by distress and sale of the offenders goods and chattels, in case the same shall not be forthwith paid, by warrant under the hand and seal of such justice, causing the overplus (if any) after deducting the charges of such distress and sale, to be rendered to the party; and the penalty so adjudged shall be paid, one moiety thereof to the informer, and the other moiety to the poor of the parish, to the overseers of which any such money ought to have been paid.

41. By s. 24. this act shall extend to all places having separate overseers, and to places united for the purpose of balloting for men, &c. as well as to all other parishes, &c., and the justices, who shall make orders for the relief of any such families, or any other justice of the same county, &c. shall give directions for the reimbursement of the money to be advanced for such purpose by the overseers of the parish or united parishes, &c. which ought to reimburse the same, or to contribute to the reimbursement thereof; and the treasurers and justices of the several counties, &c. within which such parishes, &c. lie, shall make reimbursement, and direct reimbursement to be made by such several parishes, &c. in the same manner as by this act is provided with respect to parishes, &c. therein described, and where any man shall serve for any united parishes, &c. or for any parish, &c. comprizing more than one township, &c. which shall have separate and distinct overseers of the poor, every such justice, &c. shall ascertain what proportions such united parishes, &c. or such several townships, &c. comprized within the same parish, &c. for which any such man, whose family shall be so relieved, shall serve, ought to contribute to such relief, such proportions to be ascertained according to the numbers of men liable to be balloted for the militia, which each of such united parishes, &c. or each of such townships, &c. shall appear to have had by the last returns made for that purpose, and such justices shall make orders for the reimbursement of such advances as aforesaid, in such several proportions so to be ascertained; and in order to enable such justices to ascertain such proportions, the clerks of the several subdivision meetings shall, when required, certify, by writing under their hands, the number of men so liable to be balloted for, according to the returns made for each of such parishes, &c. for which certificate shall be paid a fee of 1s. and no more.

The adjutant, or where none, the serjeant major shall make monthly returns to the clerks of the subdivision meetings of certain particulars, who shall transmit extracts to the overseers of the poor.

42. By s. 25. the adjutant of every corps of militia, or where no adjutant, the serjeant major shall, within seven days after 24th of every month, during the time of such corps remaining embodied or in actual service, return to the respective clerks of the subdivision meetings of the county, &c. to which such corps belongs, a particular list of all promotions and vacancies, and all deaths, desertions, and other casualties that shall have occurred among the private militia-men serving for the several subdivisions of the county, &c. to which such corps belongs, in the calendar month preceding each such 24th day as aforesaid; and specify the christian and surname of each man so returned, and whether balloted man, substitute, hired man, or volunteer, and the parish, &c. for which he was serving; and such respective clerks of the subdivision meetings shall, within 14 days after the receipt of such return, transmit

Disputes about wages, &c. how settled. be, allowing to his master, &c. an abatement from his wages, in proportion to the duration of his absence, to be settled by a justice in the manner hereinafter mentioned; and in every such case when any dispute shall arise between such servant and his master, &c. touching any money due to such servant, on account of his service performed, before the time of his departure, under the conditions of the said enrolment, or by being called out to join the militia in which he shall have been so enrolled, or touching any abatement to be made by such servant by reason of his absence, for the purpose of being trained and exercised; any justice for the county, town corporate, &c. where such master, &c. shall inhabit, may determine such complaint, and examine upon oath every such servant, or any other witness, touching the same, and make such order as the case may require, provided the sum in question do not exceed the sum of 20*l.*; and in case of non-payment of any sum so ordered to be paid by the space of 21 days next after such determination, such justice may issue his warrant to levy the same by distress of the goods and chattels of such master, &c. rendering the overplus to the owner, after payment of the charges of such distress and sale.

59. A husbandman who has actually served in the militia, and is married, may be removed to the place of his settlement before he becomes chargeable; for the exemption only extends to such militia-men who have set up, and are in the exercise of some trade. *Resv. Gwenop, 3 T. R. 155. ii. 541.*

60. A hiring to serve for a year, with an agreement to be absent for a month on the duty of a militia-man, will not interrupt a settlement gained by service under such a hiring. *Rex v. Westerleigh. ii. 215.*

61. A militia-man being hired for a year, with an express exception that he shall be absent on duty for a month, and in lieu thereof, to serve a month over the year, gains a settlement without serving the additional month. *Winchcombe Doug. 391. ii. 221.* But with respect to these three last cases, *vide dict. per* Lord Ellenborough. *Rex v. Beaulieu post. Art. 63.*

62. It has been decided, that a deserter from his Majesty's service cannot gain a settlement by hiring and service. The objection is that such a person cannot give the master a controul over his service for the whole year according to the contract; for the king's officers may at any time take him out of the service in which he is engaged, he cannot therefore be said to be lawfully hired into it. *Rex v. Norton, 9 E. R. 206. Supp. 153.*

63. And in another case, an invalided soldier at the depôt, who, in pursuance of an order from government, had leave of absence upon agreeing to relinquish his pay during his absence, which leave was renewed by furlough for different periods of three, six, and four

months, which he procured by going to the depôt, was held not to gain a settlement by hiring and service, although previous to such living, the mistress applied to the commanding officer at the depôt to know if he might hire himself for a year, and was told that he might, and although he received no pay during the year's service, nor was called upon, nor did perform any military duty. The case was decided upon the same principle as the last, that the soldier was not *in jure* so as to have the faculty of disposing of his own service. As to the militia-men cases, I should wish to speak of them as of the decisions of persons who have gone before us, so highly venerable, with all the respect that is due to them; but when I find them speaking of leaning in favour of settlements, and when I recollect that a pauper must be provided for somewhere, either as a settled inhabitant or as casual poor, and when I find too that one of those decisions goes the length of holding that eleven months may mean a year, I really am unable, with all the respect I bear for the judges, who decided those cases, to go along with them so far." Lord Ellenborough. *Rex v. Beaulieu*, 3 M. & S. 229. *Supp.* 270.

64. But where a soldier, whilst his regiment lay in barracks at B., took a house there for himself and family of the yearly value of 10*l.* and resided therein more than 40 days, the court held that he thereby gained a settlement, saying that this was quite distinguishable from the case of a hiring and service by a soldier, since here the soldier entered into no contract to reside for any definite period, but that if he did actually reside for 40 days it was sufficient. *Rex v. Brighton*, 1 B. and A. 270. *Supp.* 263.

65. If a son enlist as a soldier, he thereby emancipates himself from his father's family. *Walpole St. Peter's*, ii. 35. See, under the *Bastard*, cases of *Rex v. Archer*, and *Rex v. Bowen*, *Arts.* 69,

OVERSEERS.

- I. WHO MAY OR MAY NOT BE APPOINTED.
- II. WHAT NUMBER.
- III. AT AND FOR WHAT TIME.
- IV. FOR WHAT PLACES.
- V. OF NON-RESIDENT AND ASSISTANT OVERSEERS.
- VI. OF THE DEATH, REMOVAL, AND INSOLVENCY, OF OVERSEERS.
- VII. WHO SHALL APPOINT, AND OF THE FORM OF THE APPOINTMENT.
- VIII. OF THE DUTIES AND JURISDICTION OF OVERSEERS.
- IX. OF OVERSEERS' ACCOUNTS.
- X. OF THE PROTECTION IN OFFICE OF OVERSEERS.
- XI. OF THEIR PUNISHMENT AND LIABILITY.
- XII. OF EVIDENCE IN ACTIONS AGAINST OVERSEERS, AND OF THE APPOINTMENT.
- XIII. OF THE APPEAL.

I. *Who may or may not be Overseers.*

1. By 43 *Elis. c. 2. s. 1.* the churchwardens of every parish, and four, three, or two, substantial householders there, having respect to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of two justices in the same county, whereof one to be of the *quorum** dwelling in or near the same parish or division where the parish lies, shall be *Overseers of the Poor* of the same parish.

2. Except persons expressly exempted, the justices have a discretionary power to appoint whomsoever they think fit in the parish to execute the office of overseer; and, upon appeal, the sessions have the same discretion, and their decision is final, unless the sessions state their reason for the appointment, and such reason be manifestly just. *Rex v. Gayer, Burr. 245. i. 9.*

3. The words "substantial householders" are to be relatively taken; and therefore an order appointing a poor person is good if there be no substantial householder in the parish. *Rex v. Stubbs. 2 T. R. 406. i. 5.*

4. An attorney cannot be appointed to a parish office, as churchwarden, even though there be a special custom in the parish for every

* See 26 *Geo. 2. c. 27.* 7 *Geo. 3. c. 21.* post *Art. 88.*

parishioner to serve the office by rotation; for his privilege of exemption is grounded on his being obliged to attend the courts, and a custom cannot prevail against it. *Rex v. Prowse, Cro. Car.* 389. i. 7.

5. A barrister is said to have the like privilege for the same reason. *ibid.*

6. An alderman of London also, being obliged to attend the duties of the corporation, cannot be elected to a parish office. *Rex v. Abdy, Cro. Car.* 585. i. 8.

7. A clergyman, although he have no cure of souls, is privileged from being overseer. *Anonymous, 6 Mod.* 140. i. 9.

8. So peers of the realm and members of the House of Commons seem exempted. *Gibb. Codex*, 215. i. 9. *notis.*

9. Tide waiters and other revenue officers are exempted from serving the office of overseer. *Raymond v. St. Botolph, Aldgate, 2 Ch. Rep.* 196. i. 8.

10. An officer of the customs is therefore exempted, although he have not his writ of privilege at the time he is chosen. *Rex v. Warner*, 8 *T. R.* 375.; but see note *a*, at p. 379. that the exemption only exists where there are sufficient left to execute the office. i. 11.

11. Occasional residents in a parish ought not to be chosen overseers in preference to those who live constantly in the parish. *Rex v. Moor. Carth.* 161. i. 9.

12. A woman may be appointed overseer of a parish, for the words "substantial householder" have no reference to sex. *Rex v. Stubbs*, 2 *T. R.* 395. i. 10.

13. But the justices do well to refuse nominating a woman when there are other persons in the parish better able and more suited to serve the office. *Rex v. Chardstock*, i. 11. *in notis.*

14. Q. Whether an acting justice of the peace, or a lieutenant of marines on half-pay, ought to be appointed, if there be other sufficient and substantial householders within the parish? *Rex v. Gayer*, i. 9.

15. By 32 *Hen. 8. c.* 40. the president of the College of Physicians, in the city of London, and the commons and fellows of the same, shall not be chosen to the office of constable, or to any other office within the said city. *Semble*, that the equity of this act does not extend to other physicians not mentioned in it. See 2 *Keb.* 578. 1 *Keb.* 439. 2 *Mod.* 23. 1 *Hawk. P. C.* 101.

16. By 1 *Will. and Mary, c.* 18. s. 9. if any person dissenting from the church of England in the manner described in the act, appointed to the office of overseer, scruple to take upon him the said office, in regard to the oaths, or any other thing required to be done in respect of such office,

he may execute such office by *deputy*: Provided the said deputy be allowed and approved in such manner as such officer should by law have been allowed or appointed.

17. By 1 *Will. and Mary*, c. 18. s. 11. every minister, preacher, or teacher of a congregation, that shall take the oaths required by the toleration act, subscribe the declaration, and also such articles of the church of England, as are required by the act, shall be exempted from the office of overseer.

18. A Baptist preacher, qualified according to the last-mentioned statute is exempted, although he be engaged in trade. *Kenward v. Knowles*, i. 14.

19. The following classes are also exempted:—

20. By 6 and 7 *Will. 3. c. 4.* every apothecary within the city of London, and seven miles thereof, being free of the Apothecaries' Company, and every person exercising the art of an apothecary within any other parts of this kingdom, Wales, or Berwick-upon-Tweed, who has served seven years as an apprentice in the said art, according to the 5 *Eliz. c. 4.* for so long as they exercise the said art.

21. By 10 and 11 *Will. 3. c. 4.* every person who shall apprehend any person guilty of burglary, or of privately stealing to the value of five shillings, in any shop, warehouse, coach-house, or stable, and prosecute him to conviction, shall have a certificate in the manner described by the act, by virtue whereof he or his assignee shall be exempted.

22. By 18 *Geo. 2. c. 15. s. 10.* freemen of the Company of Surgeons in London, approved pursuant to the rules of the said company, for so long time as they exercise surgery, and no longer.

23. As to officers and soldiers, see title *Militia and Soldiers, Arts. 51, 52, 53.*

24. With respect to the liability of a captain of the guards, or of a person sworn in as one of the yeomen in ordinary of his Majesty's body guard, see i. 9. *note (c) semble*, they are not liable.

25. A churchwarden, while in office, cannot be appointed overseer, for the statute requires two overseers, at the least, exclusive of the churchwardens. *Rex v. All Saints, Derby*. 13 *E. R.* 145. *Supp.* 11.

II. Of the Number.

26. The 43 *Eliz. c. 2.* says four, three, or two householders.

27. The 13 and 14 *Car. 2. c. 12. s. 21.* says two or more.

28. The justices, therefore, cannot appoint more than four nor less than two overseers. *Rex v. Harman*, i. 19. *Rex v. Lordale*, i. 21. *Rex v. Clifton*, i. 24. See also *dict. Lord Kenyon*, *Rex v. Morris*, i. 21.

29. But all need not be appointed *uno flatu*; and the court will not quash an order appointing one overseer, unless it appear that others have not been appointed by other orders. *Rex v. Besland* i. 21.

30. For overseers may be each of them appointed at different times and by different instruments. *Rex v. Morris*, 4 T. R. 550. i. 23.

III. At and for what Time to be appointed.

31. The 43 *Elix.* directing the appointment to be made in Easter week, or within a month after Easter, and Sunday being the first day of the week, it seems that an appointment made *bonâ fide*, and without fraud, even on a Sunday, is good. *Rex v. Clerkenwell, Fo.* 4 i. 25. *Rex v. Merchant*, i. 29.

32. Upon one occasion, however, when the case of *Rex v. Clerkenwell* was alluded to, Lord Mansfield said, that he should think the appointment on that day *primâ facie* clandestine and bad. *Rex v. Butler and Others*, 1 Bl. Rep. 649. i. 28.

33. It seems that an appointment made after the time limited, is not *ipso facto* void, the statute only being directory. *Rex v. Sparrow*, Str. 1123. i. 25.

34. After the appointment is once made by one set of magistrates, the jurisdiction of the magistracy upon the subject is at an end; they are *functi officio*, and no other magistrates can afterwards appoint, even if those appointed claim exemption, unless the matter be brought before the sessions on appeal. *Rex v. Great Marlow*, 2 E. R. 244. i. 30.

35. Where on a contest between two adverse sets of borough justices, each set met before midnight at Easter eve, and each began making their appointments the instant the clock had struck twelve, and so kept on renewing the same appointments for an hour or two, but one set made a fresh appointment at eight o'clock on Sunday morning, the court quashed all the appointments. *Rex v. Bridge-water, Cowp.* 139. i. 29.

36. But one appointment out of two or more appointments made on the same day may be good. *Rex v. Searle*, i. 24. and in such case that first made is valid. *ibid.*

37. Where an appointment was made in consequence of a mandamus, it was held good, although made above a month after Easter. *Rex v. Sparrow*, i. 25.

38. Now by 54 Geo. 3. c. 91. the appointment must be made on the 25th of March, or within 14 days next after.

39. An appointment for a whole year is good. *Rex v. Jones*, i. 27.

40. Appointments for the present year, and for the year next ensuing, are good, for it shall, in each case, be intended to be for the over-

seers' year. *Rex v. Hilling, Burr.* 1905. i. 28. *Rex v. Burder*, 4 T. 778. i. 30.

41. So also for one year next ensuing the date of the appointment. *Rex v. Stubbs*, 2 T. R. 595. i. 30.

IV. Of and for what places.

42. The 43 *Eliz.* speaks of *parishes*, but by 13 and 14 *Car.* 2. reciting that the inhabitants of many counties in England and Wales, reason of their largeness, cannot reap the benefit of the 43 *l* enacts, that overseers shall be appointed for the townships and lages within such counties.

43. It has been held that, although this statute mention several counties by name, yet, that it is general, and extends to all counties. *Dolting v. Stokelane*, *Fort.* 219. i. 35. *Clifton v. Churcham*, 1 *Nol.*

44. And it extends to towns and villages in extra-parochial places, as well as in parishes. *ibid.*

45. But separate overseers may be appointed for a vill contain divers substantial freeholders able to contribute to the maintenance of the poor, although it be not part of any parish, and have immemorially been without church, chapel, or parochial rights, and never had overseers before. *Rex v. Rufford*, *Str.* 512. i. 36.

46. So separate overseers may be appointed for an ancient vill used and reputed as a parish before the 43 *Eliz.* c. 2. although it be a parcel of another parish, which was an ancient rectory. *Hilton v. Pawle*, *Cro. Car.* 92. i. 32.

47. So separate overseers may be appointed for a reputed vill although it was originally part of the adjoining parish. *Nichols v. Walker*, *ibid* 394. i. 33.

48. "Wherever there is a constable there is a township; there may be a constable for a larger, but not for a smaller district." *Buller, J. Rex v. Sir Watts Horton*, 1 T. R. 374. i. 54.

49. But overseers cannot be appointed to a place that is not, nor ever was a township or village, or been reputed to be a township or village. i. 38. See *Rex v. Showler and Atter*, i. 41.

50. As for instance, the sites and areas of ancient cathedral colleges, and inns of court. *Rex v. Justices of Peterborough*, *Cald.* 2. i. 50.

51. And it is a good return to a *mandamus* to appoint overseers for any particular place that such place is not, nor ever was reputed to be a vill. *Rex v. Welbeck*, i. 38. and *Rex v. Bedfordshire*, i. 48.

52. The court will not intend the place to be a vill; and therefore an appointment of overseers for the precinct of the tower, otherwise called the parish of St. Peter's, is bad; for although the place be a parish by reputation, it must be so stated. *Rex v. Severn and Arnold, Say*, 278. i. 40.

53. But in a later case, where an appointment was for the hamlet of V., the court said that vill and hamlet were in common acceptation synonymous terms, and that as the sessions had not stated expressly in their order that the place was not a vill, and that as it might be a vill, it should be so intended for the purpose of supporting the order. *Rex v. Morris*, 4 T. R. 550. i. 65.

54. An appointment to a place called Brokenham Lodge, an extra-parochial place, is bad; for it shall not from this statement be intended a vill. *Dolting v. Stokeland*, i. 35.

55. Nor shall an extra-parochial place, consisting of only two houses, be considered a township or vill. *Rex v. Denham*, i. 37.

56. Not the demesnes of a nobleman's seat in an extra-parochial place, though converted into five farms. *Rex v. Grafton*, i. 37.

57. Nor a capital mansion-house, with four other farms, and four substantial householders, but being extra-parochial, never having been reputed to be a vill, and having no constable. *Rex v. Justices of Bedfordshire, Cald.* 167. i. 48.

58. Nor a hamlet consisting only of one house, and 300 or 400 acres of land, situate within a parish, to the church rates of which it always contributed, but had never been rated to the poor. *Rex v. Tamworth, Cald.* 28. i. 45.

59. But a place may be a vill by reputation, although it only have two* or three† houses.

60. But where the sessions adjudge the place to be a vill, the court will take the fact to be as found, and grant a *mandamus*, although there be strong circumstances to shew that it is not a vill. *Rex v. Ronton Abbey*, i. 56.

61. Where a place had never been reputed to be a parish, it was held not sufficient proof of its being one that it had a chapel ‡ before the 43 *Eliz.* and that its own officers had made rates since. *Budd v. Foster*. 4 *Mod.* 157. i. 34.

* *Rex v. Eyeford, Cald.* 542. i. 53. † *Ronton Abbey*, 2 T. R. 107. i. 56.

‡ The marriages, christenings, &c. were solemnized at the church belonging to the parish of which it was held to be a part, and it had contributed to the repairs of that church.

62. The justices cannot appoint overseers under the 13 and 14 Car. 2. c. 12. for the separate parts of a parish, unless it appears that the township or village cannot otherwise enjoy the benefit of the 43 Eliz. c. 2. *Rex v. Middlesex*, i. 39. *Peart v. Westgarth*, Burr. 1610. i. 42. *Rex v. Uttoxeter*, Cald. 86. i. 46.

63. And whether or not a parish can have the benefit of the 43 Eliz. c. 2. by maintaining its poor with not more than four overseers, is a fact which the sessions ought to find, and should not leave to be presumed by the court from other conflicting evidence stated in a case reserved; such as that the parish had the benefit of the statute down to 1739, and that from thence to 1753, it was uncertain how the poor were maintained there; and that from 1753, the poor had been maintained separately in six townships, but that the population was decreased. *Rex v. Watson*, 7 E. R. 214. i. 714.

64. Where a parish is divided into separate townships which have separate overseers, each township, with respect to its poor, is to be considered as a distinct parish. *Rex v. Kirby Stephen*, i. 44.

65. Where a parish consists of several townships, some of which maintain their own poor, and have overseers separately appointed, the court will grant a *mandamus* for the separate appointment of overseers for the remaining townships; and where such parish has immemorially had more than four overseers, that is a proof that it cannot have the benefit of the 43 Eliz. c. 2.; and entitles each township to have separate overseers. *Rex v. Sir Watts Horton*, 1 T. R. 374. i. 54.

66. So where a township has had for sixty or seventy years past separate overseers, and has maintained its own poor separately from the parish at large, it is still entitled to the same privilege. *Rex v. Leigh*, 3 T. R. 746. i. 58.

67. The meaning of the phrase that a parish cannot reap the benefit of the 43 Eliz. is, not that it is impossible for them to maintain their own poor, but that it is inconvenient for them to do so. *By Buller, J. ibid.*

68. But where a parish consisted of two separate districts, each of which immemorially made a separate rate, but the money when raised was blended together in one joint fund, though applied in certain proportions, and the sessions did not find it as a fact that the parish could not reap the benefit of the 43 Eliz. c. 2. it was held that the districts were not entitled to maintain their own poor separately and distinctly, although since the year 1648 they had constantly had, in the whole, more than four overseers, and although

hamlet part had immemorially had a constable of its own. *Rex v. Jewell*, 4 T. R. 266. i. 60.

9. Where a parish has distinct officers, and makes distinct accounts, and has immemorially made distinct accounts to the justices of the several counties in which the different parts of the parish are situated, each division shall be considered as a separate parish, and shall have separate overseers. *Fletcher's case*, i. 63. *Sir T. Ray*, 476. note.

70. The two districts of which a parish consisted had, from the 43 Eliz. down to 13 and 14 Car. 2. maintained their poor separately, and, at the time of the passing of the latter act, agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupiers resided. In consequence of that agreement, they had ever since uniformly maintained their poor separately, and they had separate overseers, constables, &c.; held that this clearly shewed that the parish, at the time of the agreement, could not reap the full benefit of the statute of 13 and 14 Car. 2. and that therefore the separation of the two districts was void, and that an appointment of overseers for the whole parish was bad. *Rex v. Walsall*, 2 B. & A. 157. *supp.* 233.

71. By 59 Geo. 3. c. 95. reciting that various towns situate within one or more parish or parishes, and not co-extensive therewith, have, for a long time past, been separately assessed from the parish or parishes in which they are situate, and overseers for such town or franchise have been appointed distinct from the overseers for such parish or parishes, which have, in many cases, been made without sufficient authority; and yet, by reason of the long continuance of the said separation, the towns corporate or franchise cannot now be re-united to the parish or parishes in which they are situate, without manifest inconvenience and hardship: it is enacted, that all such separation of towns corporate or franchise from the parish or parishes in which they are situate, together with the distinct appointment of overseers, shall be deemed lawful to all intents and purposes whatsoever, in the same manner as if the said separation had taken place, under the authority of the 43 Eliz. provided that nothing in this act contained shall render legal or confirm any separation of a town corporate or franchise from the parish or parishes in which such town corporate or franchise is situate, in respect to the maintenance of the poor, or the appointment of overseers, in any case where such separation has not commenced within sixty years before the passing of this act.

72. Townships separated under 13 & 14 Car. 2. may again unite; and although a parish may not have had the benefit of the 43 Geo. 3. c. 2. before and at the passing of the statute 13 and 14 Car. 2.

c. 12. but perhaps at that period, and certainly for a long of years antecedent to 1773-5, had maintained its poor in districts, still it was held to be competent to the parishioners latter period, to cease acting under the statute of *Car. 2.* and to the general provision of 45 *Eliz.* by maintaining their one entire parish; and having done so from the year 1 court refused a mandamus to the justices to appoint separate overseers as before that time. *Rees v. Palmer and another*, 8 *E. supp.* 51.

73. And where a parish had at no time antecedent to 1773-5, had the benefit of the 45 *Eliz.* c. 2. but had all five overseers appointed separately; two for one district, another, and one for a third, yet two of the districts having in 1773 to act together, to which the third acceded in 1 there having been but four overseers since that period been appointed for the whole parish; the court held that agreement at the time, acted upon for thirty years past, per evidence for the jury to decide that the parish could enjoy the benefit of the statute, and consequently that a levy for a poor rate made by the overseers conjointly for the whole parish, was legal. *Lane v. Cobham*, 7 *E. R.*

V. Of Non-resident and Assistant Overseers.

74. By 59 *Geo. 3.* c. 12. s. 6. justices at their special sessions, nomination and at the request of the inhabitants of any parish in assembly, may appoint any person assessed to the relief of the poor and a householder, resident within two miles from the church of such parish, or where there shall be no church or chapel, within one mile from the boundary of such parish, to be an thereof, although the person so to be appointed be not a householder within the parish of which he shall be so appointed overseer; and be sufficient in every such appointment, to describe the person by his name and residence; but no person shall be appointed compellable to serve the office of overseer of any parish or place he is not a householder, unless he consent to such appointment.

75. By s. 7. the inhabitants of any parish in vestry assembly elect any person or persons to be assistant overseer or oversees parish, and specify the duties to be by * or them performed such yearly salary, for the execution of the said offices, as they and any two justices, by warrant under their hands and seals appoint any person or persons elected for such purposes, and salary as shall have been fixed by the inhabitants in vestry; and salary shall be paid out of the money raised for the relief of the

* *Sic.*

h times and in such manner as shall be agreed upon between the inhabitants in vestry and the persons so appointed; and every such assistant overseer may execute all the duties of the office of overseer in the warrant his appointment expressed, in like manner, and as fully, as the same may be executed by an ordinary overseer, and shall continue to be an assistant overseer until he resign such office, or until his appointment be revoked by the inhabitants of the parish in vestry; and the inhabitants, on the election of such assistant overseer, may require and take security for the faithful execution of the office, by bond, with or without surety or sureties, and in such penalty as they think fit, and every such bond shall be made to the churchwardens and overseers, and may, in any such of the condition thereof, be put in suit in the manner of the churchwardens and overseers of the poor for the time being, by the direction of the vestry, or select vestry, for the benefit of the parish, in the manner hereinafter provided.

VI. Of the Death, Removal, or Insolvency of an Overseer.

66. By 17 Geo. c. 38, s. 3. if any overseer shall die or remove from the place for which he was appointed, or become insolvent before the expiration of his office, on oath then made, two justices may appoint another in his stead, who shall continue in office until new overseers be appointed.

67. See at Art. 109. of this title, the remaining part of this clause, as to insolvency, *Rex v. Egginton, and Ex parte Parker, Arts.* 130, 139.

VII. Who shall appoint, and of the Form of the Appointment.

68. The overseers must be appointed by two justices; for the justices have no original jurisdiction upon this subject, and can only revoke or confirm the order on appeal. *Rex v. Flag and Chilmerton, 1 S. i. 16.*

69. By 43 Eliz. c. 2. s. 10. if at any place there be no such nomination of overseers yearly, as appointed by this act, every justice of the county, sitting within the division where such default of nomination shall happen, and every mayor, alderman, and head-officer of city, town, or place corporate, where such default shall happen, shall forfeit for every such default 5*l.*, to be employed towards the relief of the poor of the parish place corporate, and to be levied by the churchwardens or overseers, or any of them, by distress, by warrant from the quarter sessions of the county of the said county, or of the same city, town, or place corporate, at any keep sessions.

70. When a parish is part within and part without a corporation, the mayor of the corporation and a justice of the county are to be appointed, it seems, two justices within the meaning of the statute; it should be made by two for the corporate division, and two for the rural. *Rex v. Butler, i. 16.*

81. The appointment must be under the hands and seals of the two justices. *Rex v. Arnold, Str. 101. i. 16.*

82. And they must sign and seal the appointment in the presence of each other; for the appointment of overseers is a judicial act, in which the justices are to exercise their discretion, by conferring with each other on the subject. *Rex v. Forrest*, 3 T. 1 38. i. 17. See *Battye v. Gresley*, 8 E. R. 327.

83. And both magistrates must be together at the time the appointment is signed. *Rex v. Great Marlow*, 2 E. R. 244. i. 18.

84. It seems that the order should expressly state, that the persons making it are justices, although it need not state that they are justices of the peace. *Walton v. Chesterfield*, 5 Mod. 322, *Hawk. P. C. c. 8. s. 32*.

85. And also, that they are justices in and for the county, in the county alone is not sufficient; but it is not necessary to state, that they are justices in or near the division, these words being only directory. *Rex v. Dobbyn*, *Salk.* 474. i. 66 note, and *Rex v. Loshley*, *Burr.* 445. i. 21.

86. With respect to being of the *quorum*, this should be stated, but

87. By 26 Geo. 2. c. 27. No act, order, adjudication, warrant, indenture of apprenticeship, or other instrument, executed by two or more justices, which doth not express that one or more of the justices is or are of the quorum, shall be vacated for that defect only. And by 7 Geo. 3. c. 21. all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, executed by virtue of any statute, by two or more justices qualified to act within such cities, boroughs, towns corporate, franchises, and liberties, as have only one justice of the quorum qualified to act within the same, shall be valid, to all intents and purposes as if one of the said justices had been of the quorum. The practice, however, now is, to advance almost all of them to that dignity, naming them all over again in the quorum clause, except perhaps only some one considerable person, for the sake of propriety. 1 *Black. Com.*

88. It needs not be stated that the overseers are joined with the churchwardens in the office. *Rex v. Searle*, i. 3.

89. The persons appointed under the above statutes, must be expressly nominated *eo nomine* overseers in the order made by the two justices. *Rex v. St. George's*.

90. The order also must state that they are substantial householders; for an order describing them as principal inhabitants is bad. *Rex v. Sherinbroke*, *Lord Raym.* 1394. i. 4.

91. So also the order must state, that they are substantial householders in the parish, township, or vill, for which they are appointed. *Rex v. Weobly*, *Str.* 1261. i. 4. See *Rex v. Morris*, 4 T. R. 550. i. 6.

And the place also for which overseers are appointed must expressly called in the order a parish, township, or vill, as the may be. *Res v. Severn and Arnold, Sayer, 278. i. 4. Res v. is, 4. T. R. 550. i. 6.*

. And the county in which the parish, &c. is situate, must be d. *Res v. Houlditch, i. 4.*

II. Duties and Jurisdiction of Overseers, and of recovering possession of Parish Houses and Lands.

By 43 *Eliz. c. 2. s. 1.* the churchwardens and overseers, or the ter part of them, shall take order, with the consent of two justices, setting to work the children of all such whose parents shall not by said churchwardens and overseers, or the greater part of them, be ght able to keep and maintain their children; and also for setting to all such persons, married or unmarried, having no means to main- them, and use no ordinary or daily trade of life to get their living and also to raise weekly or otherwise (by taxation of every inhabitant, n, vicar and other, and of every occupier of lands, houses, tithes opriate, appropriations of tithes, coal-mines, or saleable underwoods in aid parish, in such competent sum and sums of money as they shall fit) a convenient stock of flax, hemp, wool, thread, iron, and necessary ware and stuff, to set the poor on work; and also com- t sums of money for and towards the necessary relief of the lame, tent, old, blind, and such other among them, being poor and not to work, and also for the putting out of such children to be appren- to be gathered out of the same parish, according to the ability of same parish, and to do and execute all other things, as well for the sing of the said stock as otherwise concerning the premises, as to them seem convenient.

. By *s. 2.* the said churchwardens and overseers, or such of them as not be let by sickness or other just excuse, to be allowed by two jus-, shall meet together at the least once every month in the church e said parish, upon the Sunday in the afternoon, after divine service, to consider of some good course to be taken, and of some meet order set down in the premises.

. It seems that the general acts directed by the 43 *Eliz.* to be by the churchwardens and overseers, respecting the poor, are done by the majority of them, and the spirit of that statute per- all the subsequent acts respecting the government of the *See Judgment of Lord Kenyon, Ch. J. Res v. Beeston, 3 T. R. i. 420.*

By 43 *Eliz. c. 2. s. 9.* if it shall happen any parish to extend itself ore counties than one, or part to lie within the liberties of any city, or place corporate, and part without, the churchwardens and over- or the most part of them, of the said parishes that so extend, shall, at dividing themselves, execute their office in all places within the arish, in all things to them belonging.

98. By 17 Geo. 2. c. 38. s. 15. the overseers within every township or place where there are no churchwardens, shall perform all the acts and authorities, concerning the relief of, and other matters and things relating to the poor, as churchwardens and overseers may perform, by this or any former statute concerning the poor, and shall forfeit and suffer all such penalties for neglect, abuse, or non-performance thereof, as churchwardens and overseers are liable to, by virtue of this or any former statute concerning the poor.

99. By 59 Geo. 3. c. 12. s. 24. if any person who shall have been permitted to occupy any parish or town-house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself or herself into any such house, or into any house, tenement, or hereditament belonging to such parish, shall refuse to quit the same, and deliver up the possession thereof to the churchwardens and overseers of such parish, within one month after notice, and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his or her absence, affixed on some notorious part of the premises, any two justices may summon such person so in possession to appear before them at a time and place to be appointed by them, and cause such summons to be delivered to the party so in possession, or in his or her absence, to be affixed on the premises, seven days at least before the time appointed for hearing such complaint; and such justices, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as is hereby directed, may proceed to hear and determine the matter; and if they adjudge the same to be true, then, by warrant under their hands and seals, they may cause possession of the premises in question to be delivered to the churchwardens and overseers, or to some of them.

100. By s. 25. if any person to whom any land appropriated, purchased, or taken under the authority of this act, for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or to either of them, shall have been let for his or her own occupation, shall refuse to quit and to deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her; or if any person shall unlawfully enter upon, or take or hold possession of any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, such churchwardens and overseers, or any of them, may, after such notice and demand of possession as is by this act directed in the case of parish houses, exhibit a complaint against the person in possession of such land, before two justices, who may hear and determine the matter; and if they adjudge the same to be true, cause possession of such land to be delivered to the churchwardens and overseers, or some of them, in such and the like course and manner as are by this act directed with regard to parish houses.

101. With respect to the duties of overseers in the several cases of Apprentices, Lunatics, Relief and Removal of the Poor, &c. see those titles respectively.

VIII. *Of Overseers' Accounts.*

102. The churchwardens and overseers, during the continuance and on the determination of their office, are required to pass certain accounts connected with the parochial provision for the poor; they are to account to the quarter sessions for all monies which they may receive under 5 Geo. 3. c. 8. authorizing levies on the property of husbands and parents who leave their children on the parish; and for what they may receive under 17 Geo. 2. c. 5. s. 20. The workhouse act (22 Geo. 3. c. 83.) directs, that the accounts of the churchwardens and overseers (respecting their payments under this act) shall be examined and passed quarterly by the visitor, having been first verified on oath before a justice; besides which, the same statute afterwards enacts, that the churchwardens or overseers who shall have the custody of the poor-rates, assessments, or accounts, shall, whenever requested, after four days notice, produce them to the persons nominated in the agreement for uniting parishes made by the guardians under that act, on penalty of £; and by the militia-act of 43 Geo. 3. c. 47. it is enacted, that all accounts of allowances to be reimbursed under this act, shall be made up at the end of every successive six months, or shorter period, from the first commencing payment thereof, and signed by the justices granting certificates for the reimbursement, or some other justices of the same county, riding, division, or place, within one month after the respective periods to which such accounts shall be made up, and the money due shall, as soon as possible, be demanded of the overseers' treasurers required to make the reimbursement; and no such sum shall be demandable, unless the same shall have been so certified within one month as aforesaid, and delivered to the reimbursing overseer or treasurer within three months after such certifying thereof.

103. And the statute 18 Geo. 3. c. 19. directs the overseers to lay the accounts of constables, headboroughs, and tything-men, for reimbursement before the parishioners quarterly, within fourteen days after the same have been delivered by the constables.

104. Exclusively of these accounts, which are passed during the subsistence of their office, there are others which the overseers have to settle at its determination. The stat. 7. J. 1. c. 3. which entrusts them with the management of certain monies charitably given for the binding out of apprentices in places not corporate, requires that they shall every year in Easter-week, or within one

month after Easter-day, make an account before four, three, or two justices, of all sums employed by them in binding apprentices under that act, and of all bonds and obligations for payment of such sums, and of all monies remaining in their hands not employed: and at (or within ten days after) making the account, deliver to their successors all such obligations, bonds, and money remaining unemployed. See *Chetwynd's Burn. vol. 4. p. 179.*

105. By 43 *Eliz. c. 2. s. 2.* the *overseers* shall, within four days after the end of their year, and after other overseers nominated, *yield up* to such two justices as mentioned in the act, a true and perfect account of all sums of money by them received, or rated and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their said office; and such sum or sums of money as shall be in their hands, shall pay and deliver over to the said newly-appointed churchwardens and overseers.

106. By 17 *Geo. 2. c. 38. s. 1.* the churchwardens and *overseers* shall yearly, *within fourteen days* after other overseers appointed to succeed them, *deliver in* to such *succeeding overseers*, a true and perfect account in writing, fairly entered in a book, and signed by the said churchwardens and overseers hereby directed to account, of all money by them received, or rated, and assessed, and not received; and also of all goods, chattels, stock, and materials, in their hands, or in the hands of any of the poor in order to be wrought, and of all monies paid by such churchwardens and overseers so accounting, and of all other things concerning their said office; and shall also pay and deliver over all sums of money, goods, chattels, and other things, in their hands, unto such succeeding overseers; which said account shall be *verified by oath*, or by the affirmation of persons called Quakers, before one justice who shall assign and attest the caption of the same, at the foot of the said account, without fee; and the said book shall be carefully preserved by the churchwardens and overseers, or one of them, in some public or other place in every parish, township, or place; and they are hereby required to permit *any person* there assessed, or liable to be assessed, to *inspect the same* at all seasonable times, paying sixpence for such inspection, and shall, upon demand, forthwith give copies of the same, or any part thereof, to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number.

107. By *s. 2.* in case such churchwardens and *overseers*, or any of them, shall *neglect to yield up such account*, verified as aforesaid, within the time hereinbefore limited, or shall neglect to pay and deliver over such sum of money, goods, chattels, and other things in their hands, as by this act is directed; in either of the said cases any *two justices may commit* him or them to the common gaol, until he or they shall have given such account, or shall have paid or yielded up such monies.

108. By *s. 3.* if any *overseer* shall *remove* from the place for which he was appointed, he shall, before such removal, deliver over to some churchwarden, or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall *die*, his executors or administrators shall, within forty days after his decease, deliver over all things

concerning his office to some churchwarden, or other overseer of the same place; and pay out of the assets left by such overseer, all money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied.

109. A commitment under this statute should state the party to be overseer. *Rex v. Peake*, 1 *Keb.* 574. i. 298.

110. And it must conclude "there to remain until he shall account." *Case of Mayor, &c. of Nottingham, Carth.* 152. i. 298. See *Goff's case*, 3 *M. & S.* 203. where a collector of rates refusing to account, &c. was committed "until he should be discharged by due course of law," and held well.

111. An overseer cannot be committed within the year for not giving up his accounts; nor unless it be shewn that he has not accounted before any other justices. *Rex v. Gibson*, *Fo.* 20. i. 300.

112. Where an overseer tendered an account to two justices, it was held that they had no authority to commit him, although the account only contained the gross sums he had received and paid, and he refused to give any detail of the particulars. *Rex v. Corrocke*, *How*, 395. i. 299.

113. For the justices ought to receive an objectionable account, strike out what is amiss, and balance it. *Rex v. Waldron*, i. 300.

114. The justices cannot delegate their power. *Rex v. Turner*, i. 299.

115. In one case, where an overseer tendered an account consisting of gross sums, and on his refusing to explain the particulars, the justices declined swearing him to the truth of it, the court of K. B. granted a *mandamus* to the justices, commanding them to swear the overseer to the truth of the account. Such granting of the *mandamus*, the court said, was of course; but if the justices conceived that the 17 *Geo.* 2. had not repealed the 43 *Eliz.* as to overseers' accounts, they might return that matter upon the *mandamus*, and then they should have the judgment of the court whether they were obliged to swear the overseer before he had accounted. *Rex v. Middlessex*, 1 *Wils.* 125. i. 300.

116. By 50 *Geo.* 3. c. 49. s. 1. in all cases where any such account is required to be yielded, and to be signed and attested as aforesaid by virtue of the 17 *Geo.* 2. c. 38. every such account shall be submitted by the churchwardens and overseers to two justices of the county, dwelling in or near the parish or place to which such account shall relate, at a special sessions for that purpose to be holden within the fourteen days appointed by the said last-mentioned act for delivering in such account; and such justices shall examine into the matter of every such account, and administer an oath or affirmation to such churchwardens and overseers of the truth of such account, and disallow and strike out of every such account all such charges and payments as they shall deem to be unfounded, and

reduce such as they shall deem to be exorbitant, specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same was disallowed or reduced; and such two justices may signify their allowance and approbation of any such account under their hands, and sign and attest the caption of the same at the foot of such account, in manner directed by the said last-mentioned act: And in case such churchwardens and overseers, or any of them, shall neglect to yield up or

Penalty for neglect, &c. to submit such account, or to verify the same by oath as aforesaid, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such account in manner aforesaid shall appear to be remaining in the hands of such churchwardens or overseers, any two justices may commit him, her, or them, to the common gaol, until he, she, or they, shall have yielded such account, and verified the same as aforesaid, or shall have delivered over such goods, chattels, and other things, which shall appear to be so remaining in his, her, or their hands as aforesaid; and in case such churchwardens and overseers, or any of them, shall neglect to pay to their successors within fourteen days from the signing and attesting such account, any sum of money or arrears, which on the examination and allowance of such account in manner aforesaid, shall appear or be found to be due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, the subsequent churchwardens and overseers, by warrant from any two justices, may levy all such money by distress and sale of the offender's goods, rendering to the parties the overplus, and in default of such distress, any such two justices may commit the offender to the common gaol of the county, there to remain until payment of such money or arrears as aforesaid.

117. The last-cited statute, which requires the churchwardens and overseers to submit their accounts to two justices at special sessions, to be holden within the 14 days appointed by the 17 Geo. 2. c. 38. for delivering in the said accounts to the succeeding overseers, is not a substitution in lieu of the provision in the 17 Geo. 2. but is cumulative; and if the overseer refuse to deliver in such accounts to the succeeding overseers within the fourteen days, he may be committed by two justices for such refusal. *Lester's case*, 16 E. R. 374. *supp.* 57.

118. The justices may fine, as well as imprison overseers for refusing to account. *Rex v. Sedgewick*, i. 300.

119. The balance remaining in the hands of the old overseer must be paid to their successors, and cannot be retained, even with the consent of the parish, to answer contingences. *Rex v. Justices of Somerset*, i. 311.

120. The justices, therefore, who take the accounts, may make an order for such purpose. *Rex v. Topsham*, *Salk.* 484. i. 310.

But the sessions only on appeal. *Rex v. Whitcar*, i. 308. *Rex v. Bartlett*, i. 306.

121. If the sessions balance the account, and state the sum due to the parish, but do not direct the overseer to pay that sum over to the succeeding overseers, two justices, out of sessions, may, after demand and refusal to pay, enforce the payment; and if the justices refuse to do so, they may be compelled by *mandamus*. *Rex v. Carver*, i. 314.

122. But a warrant of distress must issue before committal, either by the justices or the sessions. *Rex v. Hodges*, i. 304. *Turner*, i. 310.

123. In a late case, when the overseers, after allowance of their account by two justices at special sessions, and an order by the justices to pay over the balance to their successors, (which order was confirmed on appeal) refused to pay such balance, the court held that the justices might issue their warrant to levy the same under 50 Geo. 3. c. 49. upon the application of one of the succeeding overseers, although the rest of the churchwardens and overseers refused to concur in such application; and the justices having refused to issue such warrant, the court granted a *mandamus*. *Rex v. Pascoe and Others*, 2 M. & S. 343. *supp.* 58.

124. The parishioners have no right to call upon the overseers for the payment of the balance until a fortnight after Easter. *Rex v. Egginton*, 1 T. R. 369. i. 313.

125. If there be divers overseers of adjacent townships, who severally collect under one rate, the justices may order a balance remaining in the hands of one of them to be distributed among the others if necessary. *Rex v. Borough of Banbury*, *Skin.* 258. i. 309.

126. The court will not upon removal of an order of sessions allowing overseers' accounts (which is good upon the face of it) enter into the merits of the accounts on affidavits. *Rex v. W. James and Others*, 2 M. & S. 321. *supp.* 55.

127. Under the 43 Eliz. it seems the accounts should be delivered to two justices, and not to the succeeding overseers. *Anon. Salk.* 525. i. 299.

128. But all books of rates must be delivered up to the succeeding overseers; and in case of neglect to do so by the old overseers, a *mandamus* will issue. *Rex v. Clapham*, 1 Wils. 305. i. 301. *Rex v. Bletshow*, i. 300.

129. If an overseer become bankrupt whilst in office, and at the end of the year a balance be found due from him to the parish, he may be committed for not paying it, although the sums from

whence it accrued were received previous to his bankruptcy. *Rex v. Eginton*, 1 T. R. 369. i. 515. See 2 Nolan, 216. also case of *ex parte Esleigh*, 6 Ves. jun. 511. where the Chancellor expressed his disapprobation of this case.

130. Where an overseer becomes bankrupt subsequent to the expiration of his year, but before payment of the balance due from them, this may be proved under the commission. And where the object of an overseer's commitment is only to enforce payment, he seems protected from such imprisonment, since the bankrupt laws exempt him from arrest by any process used to compel the discharge of a debt. See *ex parte Parker*, 3 Ves. jun. 552. and 2 Nolan, 216, 217. and note.

131. By 9 Geo. 1. c. 7. s. 2. no officer of any parish shall (except upon sudden and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish who is not registered in a book (according to the provisions of that act) as a person entitled to receive collections, on pain of forfeiting 5*l.*; to be levied by distress and sale by warrant of any two justices of the same county, who shall have found him guilty of such offence, which said sum shall be applied to the use of the poor of the said parish by direction of the said justices.

132. It would seem that overseers giving relief to the families of militia-men and to poor persons at their houses under 30 Geo. 3. c. 25. are exempted from the operation of this act; and in general where money is paid by them under direction of a statute, or in obedience to an order of justices or other legal process, as under 51 Geo. 3. c. 79., 52 Geo. 3. c. 160. or for costs of maintenance, removal, or appeal.

133. In some cases where the expenditure of money is directed by particular statutes, the overseers are expressly authorized to charge it in their accounts, viz. 2 and 3 Ann. c. 6. s. 2. 17 Geo. 2. c. 5. s. 1. 18 Geo. 3. c. 19. s. 4. and 22 Geo. 3. c. 83. s. 8.

134. See 18 Geo. 2. c. 19. under title Constable, Art. 3.—also same title, Art. 6.

135. An order to pay preceding overseers for law charges was quashed. *Rex v. St. Peter's, Chichester*, i. 31.

136. The overseers are to be allowed only their bare expences. The court ought not to countenance charges for eating and drinking. *Rex v. Ashburnham*, 2 Nolan, c. 35. s. 7. note.

137. Overseers could not formerly take credit in their accounts for money paid as a salary paid to an assistant overseer, although such assistant overseer were appointed, and such salary allowed, by consent of the parish. *Rex v. Welch*, i. 312. But now by 39

Geo. 3. c. 12. s. 7. (which see at *Art. 76. ante*) they are authorized to do so.

138. But in a recent case where it was attempted to charge for a salary paid to one of the overseers themselves, the court held it could not be done, Lord Ellenborough, Ch. J. saying, "We are quite clear that he has no title to a salary for any meritorious services, nor for any services at all." *Rex v. Glyde*, 2 *M. & S.* 323. *supp.* 55.

139. The accounts of an overseer should be settled at the end of every year; and where the same person was appointed overseer for four successive years, it was held that he could not include in his account charges for several years, but must confine himself to the year in which the accounts were to be passed, and that he could not make a rate to reimburse himself money laid out during the preceding years. *Rex v. Goodcheap*, 6 *T. R.* 159. i. 301., or even within the year. *Tawney's Case*, i. 102. *Salk.* 531.

140. Nor to repay money borrowed to rebuild a workhouse. *Rex v. Wavell*, i. 102.

141. But it seems that an overseer might be ordered to reimburse another out of money already raised. *Rex v. Limchouse, Foley*, 22. 310.

142. And now by 17 *Geo. 2. c. 38. s. 11.* succeeding overseers may evy money due to their predecessors, and out of such money reimburse hem all money expended for the use of the poor, and allowed to be due o them in their accounts.

143. And by 41 *Geo. 3. c. 23. s. 9.* the churchwardens and overseers of ny parish, &c. or any of them, out of any money received by virtue of ny rate made for the relief of the poor of such parish, &c. may reimburse the preceding churchwardens and overseers, guardian or guardians, f such parish, &c. all money expended for the relief or maintenance of he poor belonging to such parish, &c. during the time that no rate for he relief of the poor thereof has been made, or during the time that any ppeal has been depending which affected the whole of such rate, or upon he hearing of which the same might be wholly quashed or set aside; and n case the churchwardens and overseers shall not pay to the preceding churchwardens and overseers, guardian or guardians, all money by them or ny of them expended, within fourteen days after demand, in writing, such preceding churchwardens, &c. or any of them, may apply to the next court of general or quarter sessions of the county, &c. or corporation, within which such parish, &c. is situate, giving due notice in writing of such application to the then churchwardens and overseers, or any two of them; and the said court shall examine the parties and their witnesses upon oath, and make an order upon the then churchwardens and overseers, or any of them, out of the poor rate to pay such money to the preceding churchwardens, &c. or any of them, as the said court shall think fit; and all money so ordered by the said court to be paid, may be levied and

recovered by distress and all such other ways and means as the money charged on any person for the poor rate can be recovered.

IX. Protection and Privileges of Overseers.

144. By 43 *Eliz. c. 2. s. 19.* in any action brought against any overseer, &c. for any thing done under the powers given by that act, he may plead the general issue, and give the special matter in evidence, and if the suit be determined in his favour, he shall have treble damages, and costs.

145. If a person assessed to the poor's rate refuse to pay, and on the overseer, &c. going to make a distress, the party voluntarily deliver his goods to the officer, and afterwards bring trespass against the overseer, the defendant shall have treble damages, and costs. *Oakley v. Salter, i. 321.*

146. But the costs shall not be trebled, but the damages found by the jury only. *ibid.*

147. And on the plaintiff being nonsuited, the overseer may have a writ of enquiry to ascertain the damages. *Brampton's Case, i. 322.*

148. So also after nonsuit in replevin, when the defendants avow as overseers, they shall have a writ of inquiry. *Herbert v. Water, i. 323.*

149. So if, on a verdict found for the defendant, the jury omit to assess damages. *Bennet v. Hart, i. 325.*

150. By 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12.* overseers may plead the general issue, and give the special matter in evidence in case of any action upon the case, of trespass, battery, or false imprisonment, brought against them for any thing done concerning their office, and shall have double costs if the suit be determined in their favour. By the latter statute the venue shall be laid where the fact was committed.

151. The above statutes of 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12.* giving double costs, do not extend to ecclesiastical matters. *Kuchwal v. Smith, i. 322.* See also *Stone v. Lingar, i. 323.*

152. Nor do the statutes 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12. s. 1.* extend to actions against parish officers for a non-feasance, such as the non-payment of money laid out for the support of one of their paupers by another parish into which he went, and for which an action of assumpsit was brought against them. *Atkins v. Barwell, i. 328.*

153. In order to entitle an overseer to double costs under these statutes, it must be certified by the judge who tried the cause, that

he was acting in the execution of his office. *Grindley v. Holloway*, i. 325.

154. But on a special verdict, where it appears by the facts there found that the act was done by the defendant in the execution of his office, the master must tax double costs, although there have been no certificate or allowance by the judge who tried the cause. *Rex v. Pickings*, i. 326. *notis*.

155. By 17 Geo. 2. c. 38. s. 8. to prevent all vexatious actions against overseers, it is enacted, That where any distress shall be made for any sum of money, justly due for the relief of the poor, the distress itself shall not be deemed unlawful, nor the party making it a trespasser, on account of any defect, or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon: nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity afterwards done by the party distraining; but the party aggrieved by such irregularity may recover full satisfaction for the special damage sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs.

156. By r. 10. provided, That no plaintiff shall recover in any action for any such irregularity as aforesaid, if tender of amends hath been made by the party distraining, before such action brought.

157. See 24 Geo. 3. c. 44. under title "*Sessions and Justices*."

158. It has been determined that overseers of the poor, though not expressly named, are officers within the protection of that statute. *Nutting v. Jackson*, i. 325.

159. And therefore overseers cannot be sued in trespass for levying a poor rate by distress, without joining the magistrates who granted the warrant in the action. *Harper v. Carr*, i. 326.

160. If therefore an overseer or constable be sued in trespass for executing a justice's warrant, and the magistrate be not joined, the defendant is entitled to a verdict on such warrant being proved, he having first complied with the plaintiff's demand of a perusal and copy of the warrant before the action brought, though not within six days after such demand, as the act directs. *Jones v. Vaughan and Hall*, 5 E. R. 445. i. 700.

161. But it has been held, that if replevin be brought against an overseer on a distress taken for non-payment of the poor rate, the justices who issued the warrant need not be made parties to the action; for replevin is an action *in rem*, to which the above statute has been never held to extend. *Milward v. Caffin*, i. 357.

162. And, therefore, to an action of replevin against overseers, &c. for the recovery of goods levied under a distress for a poor rate, without joining the justices who granted the warrants, it is

not necessary to aver that a demand was made of the perusal and a copy of the warrant; for, in this species of action, overseers are not protected by the 24 Geo. 2. c. 44. *Fletcher v. Wilkins*, 6 E. R. 285. i. 702.

163. It has been said, that if trespass be brought for distraining for a poor-rate illegally made as for land not in the occupation of the party, the case is not the same as where the justice has a general jurisdiction, and whose warrant the officer is implicitly bound to obey, but the justice, in such case, has only a special jurisdiction upon the application of the overseer, to enforce the payment of the tax, which he, the overseer, is presumed to have regularly made. *Milward v. Caffin*, i. 257. *text*.

164. Sed quære; for the 24 Geo. 2. c. 44. s. 6. says, that a verdict shall be given for the overseers, notwithstanding any defect of jurisdiction in the justice or justices. i. 257. *notis*.

165. An information in the nature of a *quo warranto* will not lie against overseers to shew their authority. *Rex v. Daubeney*, i. 324.

166. The justices in sessions cannot award an attachment against overseers. *Rex v. Bartlet*, i. 322.

167. It would seem, from its having been allowed in the case of a constable, that an overseer may have an action for defamation of his character in the execution of his office. *Thomas's case*, i. 322.

168. As to Appeal in case of Constables' Accounts, see p. 134. *Arts. 4. 5.*

X. Punishment of Overseers for misconduct, and liability of.

169. By 43 Eliz. c. 2. s. 2. churchwardens and overseers directed to meet, &c. shall. every one of them, if they absent themselves, without lawful cause, from such monthly meetings, or being negligent in office, or in the execution of the orders mentioned in the act, forfeit for every such default of absence or negligence, twenty shillings.

170. But this penalty for not meeting in the church cannot be inflicted upon overseers of extra-parochial places since the inhabitants of such places have no church to meet in. *Rex v. Rufford*, i. 334.

171. Nor can an overseer be adjudged guilty of absenting himself from such monthly meetings, until he has had personal notice of his appointment. *Rex v. Harman*, i. 335.

Paying in bad money. 172. By 9 Geo. 3. c. 37. s. 7. if any churchwarden or overseer, or other person intrusted by them, or any of them, to make payments for the use of the poor within such parish, &c. shall wilfully and knowingly make any such payments

in any base or counterfeit money, or in any other than lawful money of Great Britain, then, upon complaint thereof made to any justice of the county, &c. wherein such payment shall be so made as aforesaid, he may summon the person charged with such offence, and in a summary way, upon his non-appearance or confession, or upon proof of such offence upon oath of one witness (which oath the said justice is to administer) adjudge the party so offending to forfeit for each offence a sum not less than 10s. nor more than 20s.; and levy the same by distress and sale of the goods of such offender; rendering the overplus, if any, to the owner, after the charges of such distress and sale are deducted; which sum shall be applied for the use of any poor person of such parish, &c. in such manner as the justice who shall adjudge such forfeiture shall direct.

173. See 17 Geo. 2. c. 3. s. 3. under title Poor-rate, Art. 12. inflicting penalty for not permitting rates to be inspected.

Parish officers not obeying this act. 174. By 17 Geo. 2. c. 38. s. 14. if any churchwarden, overseer, or other officer of any parish, township, or place, neglect to obey and perform the several orders and directions of this act, or any of them, where no penalty is before provided by this act, or shall act contrary thereto, he shall, for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two justices, forfeit, for the use of such parish, &c. not exceeding 5*l.* nor less than 20*s.* to be levied by distress and sale of the offender's goods, by warrant from such justices; which sum shall be paid to some churchwarden or overseer of such parish, &c. for the purpose aforesaid.

175. By 33 Geo. 3. c. 55. two justices, at any special or petty sessions, upon complaint made upon oath of any neglect of duty or any disobedience of any lawful warrant or order of any justice, by any overseer, may, upon conviction, impose upon the offender a reasonable fine not exceeding 40*s.* to be levied, if not paid, by distress and sale, and applied to the relief of the poor of the parish where the offender resides; and if no sufficient distress can be had, the offenders may be committed for not more than ten days.

176. Generally speaking, overseers are indictable for disobeying an order of justices. See *Rex v. Jones*, i. 337.

177. They are indictable for not relieving the poor; or for relieving them without occasion. *Tawney's case*, i. 333.

178. But the justices in sessions cannot award an attachment against overseers for disobeying an order, since they have no such power of attaching for contempt. *Rex v. Bartlett*, i. 322.

179. Overseers may be indicted for refusing to account, within the time limited, for the money they have received for the relief of the poor*; or for making a fraudulent charge in their account†.

180. So for not making a rate to reimburse constables. *Rex v. Barlow*, i. 332.

* *Rex v. Commings*, 5 Mod. 179. i. 332.

† *Semle*. See *Moulsworth's case*, Comb. 287. i. 304.

181. Also for not levying penalties inflicted on other overseers. *Anon.* i. 533.

182. An indictment that the defendant was appointed overseer of the parish of *A.*, and that he afterwards refused to take the said office of overseer of the parish to which he was so appointed, was held good on demurrer. *Rex v. J. Burder*, 4 *T.R.* 778. i. 534. See also *Rex v. Jones*, i. 537.

183. And it seems that the party objecting to such an indictment must demur to it; the court will not quash it upon motion. *Rex v. Pardy*, i. 539.

184. In another case, where overseers were indicted for keeping several paupers in a filthy unwholesome room, Ashhurst, J. said that it was a settled rule not to quash indictments for perjury, non-joinders, or any serious misdemeanours, but leave the party to his remedy by demurrer, or compel him to plead; at all events, as added by Buller, J. except on clear and indisputable grounds. And the court refused to do so on the present occasion, although the names of the paupers were not set out in the indictment. *Rex v. Wetherill and Steed*, *Cald.* 452. i. 542.

185. A conspiracy by parish officers to marry a female pauper settled in the parish of *A.*, to a pauper settled in the parish of *B.*, in order to bring a charge on the parish of *B.*, is an indictable offence. *Rex v. Edwards*, i. 334. 8 *Mod.* 10.

186. Such an indictment must aver, that the parties were legally settled in their respective parishes; it is not enough to say that they were inhabitants only. *ibid.*

187. But the court will not now grant an information against overseers for such an offence*; although it seems that it was once done†.

188. Nor in any case where the supposed offence has been committed inadvertently. *Rex v. Barratt*, *Doug.* 449. i. 340.

189. But in one instance, where an overseer had, in order to prevent her becoming chargeable, forcibly removed a poor woman who was very sick and near her time, the court granted an information. *Rex v. Busby*, i. 335.

190. Where overseers were indicted for disobeying an order to reimburse money paid by the overseers of another parish to the family of a substitute in the militia under 19 *Geo. 3. c. 72.* (now repealed), it was held that the order of maintenance, as well as of reimbursement,

* *Rex v. Compton*, *Cald.* 246. i. 341. and note.

† *Rex v. Tarrant*, i. 338. *Rex v. Slaughter*, *Cald.* 247. n. (a).

must appear upon the face of the indictment; it seemed, however, sufficient, if the latter order recited the order of maintenance, or even referred to it in general terms. *Rex v. White and Ealing, Cald.* 85. i. 438.

Persons having the management of the poor to be concerned in contracts, &c. while in office. 191. By 55 Geo. 3. c. 137. s. 6. no churchwarden or overseer, or other person in whose hands the collection of the rates for the poor, or the providing for, ordering, management, controul, or direction of the poor of any parish, township, hamlet, or place, shall be placed jointly with, or independent of, such churchwardens and overseers, or any of them, under or by virtue of any act of parliament, shall, either in his own name, or in the name of any other person or persons, provide, furnish, or supply, for his or their own profit, any goods, materials, or provisions, for the use of any workhouse, or otherwise, for the support and maintenance of the poor, in any parish, township, hamlet, or place, for which he shall be appointed as such, during the time which he shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract relating thereto, under pain of forfeiting 100*l.*

Penalty. with full costs of suit to any person who shall sue for the same by action of debt, or on the case: provided, nevertheless, that if it shall happen in any parish. &c. that a person competent and willing to undertake the supply of any of the articles or things required for such workhouse, or for the use of the poor there, cannot be found within a convenient distance therefrom, other than and except some or one of the churchwardens and overseers, or other person, having the ordering, managing, controul, or direction of the poor, in such parish, &c. any two neighbouring justices, (proof thereof having been first duly made before them upon oath, and which oath any one of such justices may administer) by certificate under their hands and seals, may permit any one or more of such churchwardens or overseers, or other such person or persons as aforesaid, to contract and agree for the furnishing and supplying of any articles or things which may be required for such workhouse or otherwise, for the use of the poor of such parish, &c. during the time which he may retain such appointment; and such certificate shall be entered with the clerk of the peace or town-clerk of the county, city, town, or district, in which such person shall reside, and a copy thereof left with him; for which entry every such clerk shall receive 1*s.* and no more; and from that time, every person named in any such certificate shall be discharged from any penalty to which he would otherwise be liable under this act, for furnishing or supplying any articles or things as aforesaid; and in case any suit, for the recovery of any such penalty as aforesaid, shall be commenced against any person or to whom such certificate has been granted, he may plead generally that he was duly discharged from any liability to such forfeiture, by a certificate granted according to the provisions of this act; and upon due proof of such certificate, and of such entry thereof as aforesaid, the jury shall find a verdict for the defendant in such suit; and if the plaintiff shall become nonsuited or discontinue the action, or if verdict shall pass against him, &c. or if judgment shall be had against him, &c. on demurrer, then the defendant in such action shall have double costs, and such and the like remedy for the recovery of the same as any defendant hath for recovering cost of suit in any other case by law.

Exceptions in certain cases.

192. Upon a recent occasion, the court held that the last cited clause only prohibits churchwardens or overseers from supplying the workhouse, or the poor of the parish generally; and when an overseer, receiving an order for the relief of an individual pauper, paid him part in money, and, with the consent of the pauper, gave him the rest in goods from his shop, the court gave their opinion that it was not a case within the act of parliament. *Proctor v. Manwaring*, 3 B. & A. 145.

193. If, on a dispute respecting a rate for the relief of the poor, the matter be referred, and in the mean time the overseer borrow money on his own notes for the relief of the poor, and make no rate to reimburse himself, the lender may recover the money lent in an action against the overseer for money had and received to his use. *How v. Keech*, i. 339.

194. The overseers are bound to take care of casual poor; and if a person, not a parish officer, take care of a pauper, he may recover the money against the overseer, whose duty it was to provide for such pauper. *Simmons v. Wilmott*, 3 Esp. 91. i. 343.

195. And where a pauper who had fractured his leg accidentally, in one parish, and was conveyed to the next house in an adjoining parish, where he was visited by the overseer, and attended by the parish surgeon, with the knowledge of the overseer, it was held that the surgeon had an action of assumpsit against such overseer for the expenses of the cure. "It cannot be a matter of dispute in law, that where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick as casual poor, to look to the supply of his necessities; and if the parish officer stand by and see the obligation performed by those who are fit and competent to perform it, and do not object, the law will raise a promise on his part to pay for the performance. As to the objection that the parish in which the accident happened should have relieved him, there is no pretence for saying that there is an exclusive liability attaching to the parish upon that account; there is no reason for connecting the place where the accident happened with the liability." By Lord Ellenborough, *Ch. J. Lamb v. Bunce*, 4 M. & S. 275*.

196. But an overseer cannot be indicted for not obeying an order of a justice, or of the sessions, to pay a surgeon for attending, or a woman for nursing, a pauper. *Rex v. Woodsterton*, 1 Barnard, 46. i. 404. *Rex v. Colbatch*, 2 Bar. 207. *Rex v. Smith*, i. 403.

* See *Newby v. Wiltshire*, title "Relief" div. (c).

197. In a recent case, where a pauper, residing in the parish of A., received, during illness, a weekly allowance from the parish of B., where he was settled, the court held, that an apothecary, who had attended the pauper, might maintain an action for the amount of his bill against the overseer of B., who expressly promised to pay the same. *Wing v. Mill*, 1 B. & A. 104.

198. Where a payment has been made by a party at the sole request of one overseer, and without the knowledge of the others, and no demand is made upon them till they are out of office, it seems to be a proper question for a jury to determine whether, under the special circumstances, the party ought not to be considered as having relied upon the sole responsibility of the overseer at whose request the payment was made. *Malkin v. Vickerstaff*, 3 B. & A. 89.

199. Actions may also be brought against overseers for misapplication of the parish money, or other acts in abuse of their offices.

200. See 3 W. & M. c. 11. s. 12. *post.* for penalties against them in the case of Lunatics under that title Arts. 4. 16.

XI. Of Evidence in Actions for or against Overseers, and of the Appointment.

201. By W. & M. c. 11. s. 12. in all actions against churchwardens and overseers, for the misapplication of the parish money, the evidence of the parishioners, other than such as receive alms, or any pension or gift out of such money, shall be admitted.

202. On an indictment against overseers for refusing to take upon them the office, or for wilfully neglecting their duty, the prosecutor must produce the appointment under the hands and seals of two justices; for parol evidence is not sufficient. *Rex v. Arnold*, Str. 101, c. 16.

203. In one case, where an indenture of apprenticeship, made in 1797, having been signed only by one overseer of the appellant parish, the respondent parish, in order to shew that only one had been appointed in that year, called upon the appellants to produce the original appointment, having given them notice to produce all books and writings relating thereto) one book only was produced, and that was not for the year 1797, held that the respondents, not having taken any means to procure the testimony of the overseer himself, who must be presumed to have the custody of the original appointment, were not entitled to give secondary evidence of its contents. *Rex v. Stoke Golding*, 1 B. & A. 173. *supp.* 228.

204. Two divisions within a parish had separate overseers and separate rates, and managed their poor separately; but at the end of every year, in making up their accounts, the overseers of the one, if they had money in hand, paid the balance over to the overseers of the other: the court held that this was, in effect, one joint parochial account, and that all the overseers were to be considered as joint overseers of the parish at large. *Malkin v. Vickerstaff*, 3 B. & A. 89.

POOR RATE.

I. OF THE MAKING, ALLOWING, AND PUBLISHING THE RATE.

II. OF THE TIME FOR WHICH IT SHOULD BE MADE.

III. —PURPOSE —————

IV. —PROPORTION IN WHICH —————

V. —PERSONS UPON WHOM, AND HEREIN, OF WHAT SHALL BE DEEMED A BENEFICIAL OCCUPATION.

VI. —PROPERTY UPON WHICH, &c. AND WHERE.

VII. —LEVYING THE RATE.

VIII. —RELIEF FROM PAYING.

IX. —RATING IN AID.

I. Of Making, Allowing, and Publishing the Rate.

1. The overseers and churchwardens may make a poor-rate without the concurrence of the parishioners. *Towney's case*, Salt. 631. i. 77.

2. And if they refuse to make a rate when it is necessary, they may be compelled by mandamus. *Rex v. Barnstable and Liddleston, v. the Mayor of Exeter, Foley*, 18. i. 77, 78.

3. But not to make an equal rate, the sessions are to judge of that upon appeal. *Rex v. Weobly*, i. 112.

4. But such rate is not binding until it have been allowed by two justices out of sessions; for the sessions cannot order an original rate to be made. *Anon., Lord Raym.* 598. i. 77.

5. This allowance, however, by the two justices, is merely a ministerial act. *Rex v. Uttoxeter, ibid.*

6. Or matter of form. *Rex v. Dorchester, Str.* 393. i. 77.

7. And if they refuse to allow a rate, they may be compelled by mandamus. *Rex v. Edwards and Simonds*, 1 Bl. Rep. 637. i. 78.

8. An allowance by a county justice of a rate made in a borough, is bad. *Rex v. Foley*, i. 78.

9. By 17 Geo. 2. c. 3. the churchwardens and overseers, or other persons authorized to take care of the poor, in every parish, township, or place, shall give, or cause to be given, public notice in the church of every rate for the relief of the poor, allowed by the justices the next Sunday after the same shall have been so allowed; and no rate shall be esteemed valid, so as to collect the same, unless such notice shall have been given.

10. A rate published the third Sunday after publication was held to be a nullity. *Rex v. Newcomb*, i. 78. 4 T. R. 368.

11. By s. 2. the churchwardens and overseers, or other persons authorized as aforesaid, in every parish, township, or place, shall permit all the inhabitants of the said parish, &c. to inspect every such rate at all reasonable times, paying one shilling for the same; and shall upon demand forthwith give copies of the same, or any part thereof, to any such inhabitant, paying at the rate of sixpence for every 24 names.

12. By s. 3. any churchwarden or overseer, or other person authorized as aforesaid, who shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse to give copies thereof as aforesaid, for every such offence shall forfeit to the party aggrieved 20*l.*, to be sued for and recovered by action of debt, &c.

13. By 17 Geo. 2. c. 38. s. 13. true copies of all rates and assessments made for the relief of the poor shall be fairly wrote and entered in a book to be provided by the churchwardens and overseers of every parish, &c., who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and attest the same by putting their names thereto; and every such book shall be preserved by the churchwardens and overseers for the time being, or one of them, in some public or other place, in every such parish, &c. whereto all persons assessed, or liable to be assessed, may freely resort; and shall be delivered over from time to time to the succeeding churchwardens and overseers as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard or determined.

14. See s. 14. *ante* title *Overseers*, Art. 175. as to penalty on parish officers not obeying this act.

15. If an action of trespass be brought against the overseers for illegally distraining for a poor's rate, the plaintiff must prove the publication of it, as the statutes direct. *Rex v. Aire and Calder Navigation*, i. 75. *n.*

16. But a special case from the sessions needs not expressly state that the rate was published. *ibid.*

17. The order needs not set forth that the justices allowing the poor rate were dwelling in or near the division where the parish lies. *Cobbet v. St. Mary's, Lincoln*, 16 Vin. Abr. 425. i. 77.

18. After a rate has been allowed, no alterations by inserting different names, &c. should be made, although this be done with the consent of the magistrates. *Rex v. Barratt*, 2 Doug. 465.

19. A parish contained a borough not co-extensive with it, and the mayor of the borough, on a return to a mandamus for allowing a poor's rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since 43 *Eliz. c. 2.* of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough; but the court held that such a custom was invalid, Lord Ellenborough, Ch. J. saying, that amongst the acts specified in the 43 of *Eliz.* which might be done separately, where a parish lay partly within a town corporate, that of making rates was not one, and that not only did this afford a strong presumption that the legislature contemplated the making of one entire rate for the parish, but besides, the section expressly enacted that the churchwardens and overseers should, without dividing themselves, execute this office in all places within the said parish, which shewed distinctly that one rate only for the parish must be made, and prohibited the making of separate rates by the separate bodies of churchwardens and overseers as had been, according to the custom stated in the present return, done within the borough in question. *Rex v. Gordon*, 1 B. & A. 524.

II. Of the Time for which the Rate should be made.

20. The words of the 43 *Eliz. c. 2.* are "weekly or otherwise."

21. And it is said that a poor rate ought not to be made for a whole year, although perhaps it may for half a year. *Bishopgate v. Beecher*, 8 Mod. 10. i. 79. *Stevens v. Evans*, Burr. 1152. i. 80.

22. But by Holt, Chief Justice, "an inhabitant cannot be rated for a whole quarter; since, if so, a man could not move in the middle of a quarter, but he would be twice charged." *Tracey v. Talbot*, Salk. 532. i. 79.

23. This case, however, is now provided for by 17 *Geo. 2. c. 58.* which enacts "that where any person shall come into or occupy any premises from which any person assessed shall be removed, or which, at the time of making the rate, was empty, every person so removing or coming in shall pay the rate, in proportion to their respective occupations."

24. And therefore, because possessors are to pay, and possessions

quently change, the rate ought to be made monthly. *Case of Newport*, 6 *Mod.* 97. i. 79.

15. It has been said that the rate ought to be made monthly, but Wilmot, Justice, whatever the law may be upon this point, the ctice of overseers is not to make their rates monthly. *Stevens Evans*, *Burr.* 1152. i. 80.

16. And, by Lord Mansfield, "it seems full as well to make a rate three months as for one month." *Rex v. St. George's, Middlesex*, 31, *Rep.* 694. i. 80.

17. A poor-rate made for six months prospectively is good. *Dur- et v. Boys*, 6 *T. R.* 580. i. 80.

18. The justices cannot make a standing rate. *Rex v. Audley*, k. 526. i. 110. 272.

III. Purpose for which the Rate may be made.

19. See 43 *Eliz.* (title *Overseers*, Art. 95.) as to the general purposes of the rate; 18 *Geo.* 3. c. 19. and 13 and 14 *Car.* 2. c. 12. 18.

20. As to the payment and reimbursement of *Constables*, (see that e, *Arts.* 1. 3.,) and as to the reimbursement, &c. of *Overseers*, that title, *div. VIII.*

IV. In what Proportion to be made.

21. By 17 *Geo.* 2. c. 38. s. 12. persons coming into the occupation of ds, &c. out of which any other person assessed was removed, or which any time of making the rate was empty, shall pay in proportion to the e they occupy, to be ascertained by two justices.

22. It is said that the most reasonable way of taxing land is by a und rate, and of goods in the same proportion on the amount of e per cent. of their value. *Dalt.* 253. i. 110.

23. But the rent of houses or land is not a standing rule; for circumstances may differ. *Anonymous*, i. 110.

24. Even the rent reserved on a lease is not to be taken as conclusive evidence of value, for if the estate were underlet at the time granting the lease, or have become improved during the continu- ce of it, the assessment ought to be on its real value. *Rex v.ingle*, 7 *T. R.* 549. i. 218.

25. For every inhabitant of the parish ought to be rated accord- g to the present value of the estate whether it continue of the same alue as it was when he purchased it or whether it be rendered

more valuable by the improvements which he has made upon it. *Rex v. Mast*, 6 *T. R.* 154. i. 211.

36. Nor is the land-tax a good rule. *Rex v. Clerkenwell*, i. 111.

37. An ancient rate may be a good rule for future assessments, although it cannot be confirmed as a standing rate. *Rex v. Wrenham Regis*, i. 111.

38. If the owner of a house occupy part of it, he is liable to be rated to the poor for the whole, unless there be a distinct occupation of the rest by some other person. *Rex v. St. Mary the Less*, 4 *T. R.* 477. i. 120.

39. A poor-rate made on three-fourths of the yearly value of lands, and on one moiety of the yearly value of houses, is not necessarily unequal. *Rex v. Brograve, Burr.* 2491. i. 112.*

40. A rate made on one half of the full yearly value, or rack rent of farms, and taking one twentieth part of all stock, personal estate, and money out at interest, valuing the interest of such twentieth part at four *per cent.*, and then rating one moiety of such twentieth part, varying the proportion as circumstances require was held to be a good and equal rate. *Rex v. Hardy, Coup.* 479. i. 113.

41. A rate on lands and houses at one penny in the pound, without making any distinction between farms, dwelling-houses, and cottages, although they had before been respectively rated in different proportions, is not unequal. *Rex v. Butler and Others*, i. 114.

42. Whether houses are to be rated in a different proportion from land, must depend on local circumstances. *Rex v. Sandwich, Doug.* 562. i. 115.

43. Where a navigation runs from *A.* to *B.* through several intervening parishes, and the tolls for the whole navigation are collected in those two parishes, they may be assessed to the poor's rate in those two parishes for the whole amount according to the proportions collected in each. *Rex v. Aire and Calder Navigation*, i. 117.

44. But where by a navigation act the proprietor is entitled to a toll of 4*s.* a ton for goods carried from *A.* to *B.* or from *B.* to *A.* and to a proportionable sum for any less distance, and is also enabled to appoint any place of collection, the tolls for goods carried the whole voyage from *A.* to *B.* are rateable in *B.*, though in fact they are collected in a parish between *A.* and *B.*, because the tolls become due where the voyage is completed. *Rex v. Page*, 4 *T. R.* 543. i. 114.

* And unless the rate appear upon the face of it manifestly unequal, the court will never interpose. *ibid.*

45. So where a navigation act empowered the proprietors to take so much per mile per ton for all goods carried along the canal; it was held that they were rateable to the poor for the tolls in different parishes where the tolls became due, that is, where the respective voyages finished; though for their own convenience they were authorised to collect the tolls where they pleased; and did in fact collect them in other parishes. *Rex v. Staffordshire Navigation*, 8 T. R. 140. i. 89.

46. But where goods are carried along two different lines of canal, one of which is by statute exempted from being rated in respect of the tolls, and the other not; though the voyage happen to finish on the unexempted line where the tolls became due and were received, yet the canal company shall not be rated for more than such proportion of the tolls as accrued in respect of the carriage along the unexempted line; and the toll arising in respect to so much a ton per mile, is to be rated only for so many miles as the goods were carried along the unexempted line. *Rex v. Leeds Canal*, 5 E. R. 325. i. 95.

I. Upon whom the Rate may be made, and what shall be deemed a beneficial Occupation.

47. By taxation of every inhabitant, parson, vicar, and others, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods, in the said parish. 43 Eliz. c. 2.

48. A person living out of a parish, but having land in his own occupation within the parish, is, as the occupier of such lands, rateable to the poor. *Jeffery's Case*, i. 122. *Paget v. Crompton*, i. 123. *Id.*

49. But in such case he is charged as occupier with respect to his possession of the lands; and not as landlord with respect to his property. *Sir Anthony Earby's Case*, i. 123.

50. The occupier is to be charged, because the rate is not a charge upon the land but upon the occupier in respect of the land. *Case v. Stephens*, *Fitzgib.* 207.

51. The lessee of a stall in a market which he frequents and uses regularly once a week, on market day, is not rateable to the poor as an occupier within the parish. *Holledge's Case*, i. 123.

52. The lessor of a fair is not rateable to the poor for the profits arising therefrom. *Rex v. Brograve*, i. 141.

53. The preacher of a meeting-house is not liable, as preacher, to the poor rate, in respect of the meeting-house, for he is no more chargeable as an occupier than any of his audience. *Rex v. Southwark*, i. 128.

54. So a person employed by the Philanthropic Society to superintend the children, at annual wages, under an agreement that she should have a dwelling free from taxes, &c. with certain other perquisites, and who may be dismissed at a minute's warning on receiving three months' wages, is not rateable to the poor as occupier to the house provided by the society, she having no distinct apartment therein, except a bed-chamber, and her family not being allowed to live there. *Rex v. Field*, i. 206.

55. The owner of a private house converted into a conventicle, and used, not for the purposes of profit, but of preaching only, is not rateable to the poor. *Anonymous*, i. 128.

56. So the trustees of a Quaker's meeting-house, of which no profit is made by the pews, &c. are not rateable to the poor. *Rex v. Woodward*, i. 205.

57. So an alms-house wholly occupied by objects of charity, or their attendants, and of which no profit is made, is not rateable to the poor, although the absolute property of it be in the person who gives the alms. *Rex v. Waldo*, i. 166.

58. But the objects of a charitable foundation who are in the occupation of the alms-houses and lands for their own benefit, in the manner prescribed by the rules of the institution, and liable to be dismissed for any breach of such rules, are rateable in respect of such occupation. *Rex v. Munday*, i. 223.

59. So the master of a free school, appointed by the ministers and inhabitants of the parish under a charitable trust, whereby a house, garden, &c. were assigned "for the habitation and use of the master and his family freely without payment of any rent, income, gift, or sum of money, or other allowance whatsoever," for the teaching of ten poor boys of the inhabitants, is rateable to the poor for his occupation of the same. *Rex v. Catt*, i. 213. 6 *T. R.* 332.

60. So a private building always used as a chapel, and, by contract, never to be used for any other purpose, if a profit be made of it, is liable to be rated to the poor. *Robson v. Hyde*, i. 164.

61. The trustees of a Methodist chapel, receiving money annually for the rent of the pews, were held to be rateable for the profits made of the building, although in fact they expended all that they

received in making disbursements for repairs, &c. paying attendants to the chapel and the salaries of the preachers. *Rex v. Agar*, 14 E. R. 256. *supp.* 88.

62. The governors of St. Luke's Hospital are not liable to be rated to the poor, for they are not beneficial occupiers, but mere nominal trustees. *Rex v. St. Luke's*, i. 132.

63. So also the governors of St. Bartholomew's are not rateable to the poor; for though a corporation, yet the members of it cannot be considered as the occupiers of any part of the hospital, and they cannot be charged to the poor in any other capacity. *Rex v. St. Bartholomew's Hospital*, i. 139.

64. But a corporation seized of lands in fee for their own profit, are, within the meaning of the 43 *Eliz. c. 2.* inhabitants or occupiers of such lands, and, in respect thereof, liable, in their corporate capacity, to be rated to the poor. *Rex v. Gardner*, i. 143.

65. Where a corporation is seized in fee of certain uninclosed lands, which are stocked with the cattle of the resident burgesses, or the widows of such, who alone are permitted by the burgesses to claim such right, and also by poor parishioners who are admitted to such enjoyment from charity; the land is liable to be rated. *Quære*, Who shall be considered as the occupiers? *Rex v. Aberavon*, i. 233.

66. And where a corporation is seized in fee of lands, which, by the custom, are annually meted out under the controul of a leet jury, according to a certain stint, to such of the resident burgesses who choose to stock the same, they paying 9s. 4d. to each of the other burgesses who do not stock; the burgesses who so stock are tenants in common of the land so occupied by them, and as such occupiers, are liable to be rated for the same to the poor. *Rex v. Watson*, i. 237.

67. So also where the persons belonging to an hospital, as at Chelsea Hospital, have separate and distinct apartments, in which they live as in houses of their own, they are occupiers of their respective mansions, and rateable to the poor. *Ayre v. Smallpiece*, i. 131. See *Rex v. Terrott*, i. 230.

68. So the servants of the King, occupying separately houses and land, are rateable to the poor; for it is immaterial whether they pay for them in rent or in services. *Rex v. Matthews*, i. 151.

69. The ranger of a royal park was held rateable to the poor, for inclosed lands in the park yielding certain profits; but not for

the herbage and pannage, which yields no profit. *Lord Bute v. Grindall*, i. 173.

70. Stables rented by the colonel of a regiment by order of the Crown for the use of the regiment, are not rateable to the poor; for neither the possessions of the crown or of the public are liable, and the stables thus used must be considered as the occupation of the public. *Lord Amherst v. Lord Somers*, 2 T. R. 372. i. 184.

71. But where the sessions found that the master gunner at Seaford was the occupier of the battery-house, it was held that that fact fixed his liability to be rated, although the battery-houses were the property of the crown, and he removeable from it at pleasure. *Rex v. Hurdle*, 5 T. R. 497. i. 187.

72. And the owner of stables, rented by an officer of the crown for the use of his troop, was held to be liable to assessments under a private act of parliament, which provided that the rates should be paid on public buildings by the owners or proprietors thereof; but it was held that the officer could not be considered a beneficial occupier of such stables so used by him for public purposes. *Eckersall v. Briggs*, 4 T. R. 6. i. 195.

73. The warden of the Fleet was held liable, not only for that part of the building which he personally occupied, but for what he let out in lodgings. *Rex v. Eyles*, i. 167. And by Lord Mansfield, *ibid*, "it appears that the King's Bench and other prisons are rated; little arises from county prisons not being rated, since they are chiefly used for the custody of felons, and no profit is made of them."

74. An act of parliament having vested the after-math of a certain meadow in trustees upon certain trusts, with power to let the said after-math in pastures for horses, &c. or to demise the same for a term of years, the court held that the trustees, having let out the after-math in pastures (as it was called) at so much a head for horses, &c. to various persons for no certain term, and in no certain proportions, must themselves be taken to be the occupiers of the land, and therefore rateable for it to the poor. *Rex v. Trustees for the Burgesses, &c. of Tewkesbury*, 13 E. R. 155. *supp.* 86.

75. When a farmer is rated for his whole farm, it is no ground of objection to the rate by a third person, that a dairyman who rented under the farmer his stock of cows to be depastured on the same ground, was not rated for such dairy, although it were stated in the

that the dairyman made a profit of the produce of the cows, independent of the profits made by the farmer; for the rate upon the farm, for the whole farm, includes all the profit of the land, and stock appertaining to it, or considering the cows as personal property distinct from the land, they are the personal stock or capital of the farmer, not of the dairyman, and the latter only makes his profit by his labour out of the capital stock of another. *Rex v. Brown*, 1 R. 528.

If *A.* have an exclusive right of using a way-leave over land which he holds in common with *B.*, paying *B.* a certain sum yearly, to have the privilege of using a way-leave occupied by *C.*, paying so much per ton for the goods carried over it. *A.* is not liable to be rated in respect of either of such way-leaves, they being merely easements. *Rex v. Jolliffe*, 2 T. R. 90. i. 181.

Quære. Whether the owner of the land, who receives a profit from each way-leave, be not liable to be rated for such an increase of value?

Where *A.* having granted to *B.* a lease for years of way-leaves, (for the purpose of carrying coals,) and the liberty of erecting waggon-ways, and levelling hills over certain lands, *B.* made the waggon-ways, inclosed them, *thereby excluding all other persons*, erected houses, and built two houses on the land for his servants, the court held that *B.* was liable to be rated to the poor for the ground and the waggon-way. *Rex v. Bell*, 7 T. R. 398. i. 219.

See Addenda AA
VI. Upon what Property to be made.

OF PERSONAL PROPERTY, GENERALLY.

LANDS AND HOUSES, &c.

TOLLS, WATERWORKS, FERRIES, BRIDGES, FISHERIES.

SHIPS.

TITHES.

MINES.

WOODS, AND MISCELLANEOUS.

a. Of Personal Property, generally.

The 43 Eliz. c. 2. s. 1. only mentions lands, houses, tithes and appropriation of tithes, coal-mines, and saleable under-

woods, as the subjects of taxation for the relief of the poor; but all property, both real and personal, is taxable: *Rex v. Sir A. Earby*, i. 124.

2. The rate, however, can only be made on such personal property as the owner is in the visible occupation of. *Anonymous*, i. 124. *also dict. by Lord Kenyon. Rex v. Andover*, i. 153.

3. The bare possession of personal property is evidence of the possessor's liability to be rated, but it must appear that such property belongs to the possessor, that it is productive, and that it is not subject to incumbrances equal to its value, before the rate can be made. *Rex v. Dursley*, 6 T. R. 53. i. 210. *Darlington*, i. 215.

4. See also in the report of *Rex v. White*, i. 202. a dictum of *Yates, J.* in H. T. 1769, noticed by *Lord Kenyon*. "If personal property be rateable, it is not to be done at random, and to leave the party rated to get off as he can; but the officer making the rate must be able to support what he has done by evidence. And no personal property can be rated but the clear liquidated surplus after paying all debts."

5. When the sessions find that certain persons in a township are possessed of visible stocks in trade there, and are personally liable to be rated, but state also that they are not satisfied, from the evidence offered before them, that there is any surplus profit on such stocks, by which they could amend a rate which omitted them, that concludes the question. *Rex v. Sir A. Mac Donald and others*, 12 E. R. 324. *supp.* 75.

6. And the difficulty of rating personal property is so great as to render it almost impossible, for it would be compelling persons to discover their debts. *Rex v. Canterbury*, i. 140. by *Ld. Mansfield*.

7. The stock rated must be particularized in the rate, in order that the court may see that it is personal property in such a situation as the law will consider visible and productive. *Rex v. Whitney*, i. 141.

8. The stock in trade of common brewers is not that species of visible property that can be rated to the poor. *Rex v. Ringwood*, *Cowp.* 336. i. 148.

9. Generally speaking, however, the stock of a trader is rateable. *Anon.* i. 124.

10. And this, notwithstanding it never have been rated, unless there be some special circumstances to take it out of the general rule. *Rex v. Ambleside*, 16 E. R. 380. *supp.* 95.

11. But it must be the clear, liquidated, ascertained, personal estate and stock, and not that which is casual, fluctuating, and uncertain. *Rex v. Canterbury*, i. 140. See also *dict.* by Lord Kenyon. *Rex v. Mast*, 6 T. R. 154. i. 211.

12. Stock in husbandry is said not to be rateable, unless it be of such a nature as to be considered stock in trade. *Rex v. Barking*, i. 126.

13. But see *Burr.* 2656, where the authority of this case is doubted.

14. Where an order stated that A. B. was the proprietor of stock in trade as a draper, that his profits thereon were 15 *per cent. per annum*, and that he ought to be rated so much for such stock and profits, it was held not to be a description of property sufficiently visible to render it rateable. *Rex v. Andover*, i. 153.

15. But where it has been the usage of a parish to rate personal property in a particular manner, as to charge a clothier a penny or other just proportion, as his share or contribution towards the relief of the poor in respect of his stock in trade, such rate is good. *Rex v. Hill*, i. 155.

16. So where, under the like usage, a butcher, whose returns in trade were estimated at 20*l.* a week, was assessed four shillings as his share or contribution in respect of his stock in trade, the rate was held good on the authority of *Rex v. Hill*. *Rex v. Rodd*, i. 161.

17. But such usage must have been uninterrupted. *Ibid.*

18. So also, where, under a like usage, a rate was made on personal property consisting in ships employed in carrying on the Newfoundland trade. *Rex v. White*, 4 T. R. 771. i. 202.

19. If stock in trade be once rated, and no appeal made against the rate, it is strong *primâ facie* evidence to prove its liability to be rated. *Rex v. Darlington*, i. 215.

20. But household furniture, money out at interest, officers', and sailors' pay, and the salaries of clerks in the customs, or of servants to traders, are not rateable to the poor. *Rex v. White*, i. 202.

21. Thus where the appellant inhabited a tenement for the purpose of superintending a salt-work, and received a salary of 10*l. per annum* from government, it was held that he could not be rated for such salary. *Rex v. Shalfleet*, *Burr.* 2011. i. 138.

22. An attorney is not rateable for the fees and profits of his profession. *Rex v. Startifant*, 7 T. R. 60. i. 217.

23. Not a silk throwster for the profit derived from cleaning and throwing his employer's silk. *Res v. Sherborne*, 3 E. R. 557. *supp.* 67.

24. Lands purchased by a company, and converted into a dock according to an act of parliament, which declares that the shares of the proprietors shall be considered personal property, are rateable to the poor in proportion to the annual profits. *Res v. Hull Dock Company*, 1 T. R. 219. i. 171.

25. If an act of parliament direct the poor rate to be made on all persons having and using stocks and personal estates, or having money out at interest, these words will not warrant an assessment on money vested in the public funds or on government security, for stock cannot be considered money out at interest, or as local visible property, within the parish. *Res v. Maddermarket*, 6 E. R. 182. i. 259.

b. Houses and Lands, &c.

26. Houses, shops, and sheds, which render an annual revenue, are rateable to the poor. i. 124.

27. If two several houses be inhabited by two families, they shall be rated separately, although the house have but one entrance. *Tracey v. Talbot*, Salk. 531. i. 125.

28. If the owner of a house occupy part of it, he shall be rated for the whole, unless there be a distinct occupation of the rest by some other person. *Res v. St. Mary the Less*, 4 T. R. 477. i. 200.

29. Chambers in an inn of court or chancery are not rateable, provided the inn be extra-parochial. *Moxon v. Horsenail*, i. 129.

30. It seems that the pantheon, play-house, and other places of public amusement, are rateable. i. 143. *text.*

31. A light-house seems rateable for the building only. *Res v. Reboue*, i. 143.

32. A bishop is liable to be rated in respect of his palace; there can be no prescription against this tax. *Res v. Chichester*, i. 125. 3 *Keb.* 572.

33. The scite of a royal palace, granted for a permanent interest, is rateable to the poor. *Duke of Portland's case*, i. 131. *pl.* 166.

34. But the royal palaces are not rateable to the poor. *Res v. Matthews*, i. 151.

35. Lands appropriated to the use of an hospital, if occupied, are rateable to the poor. *Anon.* Salk. 526.

36. An exemption, in a private statute, of lands given to charitable purposes from all public taxes, extends to the poor-rate. *Rex v. Scott*. 3 T. R. 602. i. 189.

37. Where a statute directs that the tolls of a canal shall be exempted from any taxes, rates, &c. other than such as the land through which it passes, would have been liable to if the act had not been made, it goes to exempt the tolls *quod* tolls altogether from being rated in respect to the line exempted, leaving the land rateable as before. *Rex v. Leeds Canal Company*, 1 T. R. 219. i. 95.

38. Where a statute empowered the proprietors of a canal to take rates in respect of vessels navigating the same, and expressly exempted such rates from the payment of all taxes, rates, &c. held that the land occupied by the canal was also thereby exempted from the poor's rate. "A rate on land is in effect a rate on the profits of land, for where there are no profits there is no beneficial occupation; in this case the rates and duties being exempted, the land itself must be considered as exempted." *Holroyd, J. Rex v. Calder and Hebble Navigation*. 1 B. & A. 263. *supp.* 244.

39. See *Williams v. Pritchard*, i. 190. *Eddington v. Berman*, i. 192. *Pritchard v. Heywood*, i. 221.

40. Lands or buildings may be rateable in a higher proportion from having certain appendages, such as a right of common, &c. and in the case of common, although the common-land be in a different parish. *Kemp v. Spence*, 2 Bl. Rep. 1245. i. 82.

41. A person renting a quantity of land, together with a mineral spring thereon arising, at a gross yearly rent, is rateable to the poor in respect to the whole of such rent, though in fact the annual value of the land, independent of the spring, is only in proportion of two to eight of the reserved rent. "The consideration of the well increases the rent; it is part of the produce of the land, and as such, ought to be rated." *By Lord Mansfield. Rex v. Miller, Cowp.* 619. i. 155.

42. And this, although the profits of the spring do not become due to the owners, (being also occupiers,) in the parish where the land lies. *Rex v. New River Company*, 1 M. & S. 503. *supp.* 96.

43. The occupier of land on which a way-leave is erected for the purpose of carrying coals, is rateable for the same to the poor, whether his title to it be good or bad. *Rex v. Bell*, 7 T. R. 598. i. 218.

44. But where *A.* had an exclusive right of using a way-leave over land, which he held in common with *B.*, paying *B.* a certain

sum yearly, and had the privilege of using a way-leave occupied by *C.* paying him so much per ton for the goods carried over it, it was held that *A.* was not liable to be rated to the relief of the poor in respect of either of such way-leaves. *Rex v. Jolliffe*, 2 *T. R.* 90. i. 181.

45. Where land has been converted into a barge-way or toll-gate, dock, &c. the artificial profits thereby arising from it are rateable, and rateable where due. See *R. v. Mayor of London*, i. 181. *Atkins v. Davis*, i. 179. n. *Hull Company*, i. 171. also other cases under title *Tolls* of this Division. See also *Rex v. Brown*, 8 *E. R.* 528. *supp.* 59.

46. But where a canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish, in proportion to the length of the canal in such parish; it was held that the company were liable to be rated for their lands, &c. only at the same value as other adjacent lands, and not according to the improved value derived from the land being used for the purposes of the canal. *Rex v. Grand Junction Canal Company*, 1 *B. & A.* 289. *supp.* 247.

47. Again, land may be rated higher from the circumstance of having personal chattels annexed to it; as where a machine-house was rated, not only in proportion to the value of the house itself, but the profits of the machine. But such must be the clear profits, with a liberal allowance for wear and tear, labour and attendance. *Rex v. St. Nicholas, Gloucester, Cald.* 262. i. 163.

48. Nor is it necessary that such machine should be affixed to the premises. *Rex v. Hogg, Cald.* 266. i. 177.

49. If a house, in consequence of having a billiard-table, let at a higher sum than it otherwise would do, it is rateable so long as the table continues there; and it is so let at the advanced rate. *Rex v. St. Nicholas, Gloucester*, i. 163. *by Willes, J.*

50. Where an annual sum was paid for the privilege of using a building as a canteen, and selling therein liquors, &c. independently of a fixed rent paid for the building itself, it was held that the lessee was rateable in respect of the aggregate sum paid, and not merely of such fixed rent. *Rex v. Bradford*, 4 *M. & S.* 317.

51. By 17 *Geo. 2. c. 37.* the occupiers of drained and improved lands, or houses built thereon, &c. where the parish to which they belong cannot be ascertained, shall be rated to the parish which is nearest to such lands,

in the same manner as all other lands, &c. within such parish, are rated: disputes to be arranged at the sessions.

c. Tolls, Waterworks, Ferries, Bridges, Fisheries, and where.

52. The tolls of a light-house, not collected altogether within the parish, and the owner of such light-house not having any residence, or being otherwise an occupier within the parish, were held not to be rateable there; the tolls not being locally situated there. *Rex v. Rebowe*, i. 142. but see *Rex v. Cardington, Cowp.* 581. i. 154.

53. In a similar and later case the same doctrine was maintained; Lord Ellenborough, Ch. J. saying, "the tolls are not received in the parish, nor do the ships from which they are collected come within the township; the subject matter of the rate has no locality within the township." *Rex v. Tynemouth*, 12 *E. R.* 46. *supp.* 74.

54. The toll of a corporation is rateable. *Rex v. Wickham*, i. 125.*

55. The tolls arising from a sluice are rateable; and this, where they become due, not where they are collected. *Rex v. Cardington, Cowp.* 581. i. 154.

56. So those arising from a navigable canal; and where the respective voyages finish. *Rex v. Air and Calder Navigation*, 2 *T. R.* 660. i. 186. *Rex v. Page*, i. 84. *Stafford and Worcester Canal Company*, 8 *T. R.* 340. i. 89.

57. Subsequently, however, to these cases, it has been clearly held that tolls are not rateable *per se*; and it was observed upon one occasion, that in each instance the party claiming the tolls had an interest in some local visible property within the parish connected with their interest in the tolls. With respect to *Rex v. Cardington*, there it was said the sluice was real property, and in the case of *Rex v. Wickham*, the corporation were the lords of the soil where the market was held, in respect of which they were rated for the tolls; and again, in the case of the *Staffordshire and Worcestershire Canal*, the basins, towing paths, and that part of the canal, &c. for which the rate was made, were local visible property, and the tolls were considered as resulting from that local visible property: "In all the cases the tolls have arisen from the use of the canal which is local and visible, being part of the land itself going within the parish where the tolls have been rated; but there is no case where tolls, detached altogether from local real property, have been

* See note i. 125. excepting this case from Mr. Justice Ashurst's censure of Keble's Reports, which he pronounced to be a book of no authority. *Atkins v. Davis, Cald.* 328-9. 338.

held to be rateable *per se*." *Rex v. Nicholson*, 12 E. R. 330. *supp.* 78.

58. See also *Rex v. Milton*, 3 B & A. 112. where it is said, by Bayley, J. that the cases of *Rex v. Page* and *Rex v. Air and Calder Navigation*, did not admit of the distinction mentioned above, and were expressly over-ruled by the case of *Rex v. Nicholson*.

59. A poor-rate on the occupiers of the Rochdale Canal lock, tunnel dues, or rates, was held to be good, although such occupiers were not inhabitants of the township for which the rate was made; and Lord Ellenborough observed, that the lock itself was rated, which was something real and substantial locally situated in the township and producing profit, and the addition of the dues and rates was merely giving other names for the same thing, and that the decision that tolls are not rateable *per se* was by no means affected in determining the present case. *Rex v. Sir Archibald Mac Donald*, 12 E. R. 330. *supp.* 75.

60. Where a river navigation extended through several parishes, and certain tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf within the parish of B., the court held that a rate on the proprietor of those dues, for their whole amount in the parish of B., stated to be for river tonnage, could not be considered as a rate upon that part of the river situate within the parish of B., but as a rate upon the parts of the river situate as well within as without the parish, and therefore that as tolls *per se* are not rateable, it could not be supported. *Rex v. Milton*, 3 B. & A. 112.

61. It was said, upon this occasion, that in the case of *Rex v. Sir Archibald Mac Donald*, if the dues, &c. had arisen from property partly within and partly without the parish, it would have been like the present case, but the dues there were in respect of vessels passing through the lock, *which lock lay within the parish*, and therefore all the dues and tolls arose from what might be called parish property. *ibid* by Bayley, J.

62. A canal was made under 8 Geo. 3. which contained no clause as to the mode of charging it to the parochial rates, and another canal was made under the 23 Geo. 3. c. 92. and was therein described to be rated in a special manner, and these two canals were incorporated by the 24 Geo. 3. by which it was provided, that all the clauses, powers, provisions, restrictions, exemptions, &c. contained in each of the two former acts, should still remain distinct from each other: afterwards by 58 Geo. 3. c. 19. reciting that it was expedient to extend one system of management to the whole

anal, it was enacted, that "all the canals, &c. so made as aforeaid under the former acts, or any of them, should be deemed part and parcel of the Birmingham Canal Navigations, and be considered as included and governed by all the clauses, &c. in the 23 and 24 Geo. 3. (save and except so much thereof as related to exemptions from stated duties in the quantum of coals to be collected) as if the same had been described in the 23 Geo. 3. as part of the works to be made and done under and by virtue of that act;" held that this provision only incorporated those canals, &c. for the purpose of management, and that it did not authorize the canal originally made under the 8 Geo. 3. to be rated to the parochial taxes in the special manner pointed out by the 23 Geo. 3. *Rex v. Birmingham Canal Company*, 2 B. & A. 570.

63. The corporation of Bath, under powers given by 6 Geo. 3. c. 70. erected reservoirs for water in the parish of A., from which, by means of pipes, they supplied the inhabitants of the parish of A. B. and C. with water, and derived profit; the court held that they were rateable in the parish of A. for so much of the profits arising from these reservoirs as they made in A., but not for the entire profits made in A. B. and C.: "It has been established as the sound construction of the stat. 43 Eliz. that the word inhabitants in that act is only satisfied by a residence within the parish, and as there is no doubt the corporation of Bath are not residents, they cannot be charged *eo nomine* as inhabitants in this case, and therefore, if rateable at all, must be rated as the occupiers of some of the description of property mentioned in the act; and that they are the occupiers of the reservoirs, and that such reservoirs, and the water kept therein, are comprehended within the legal description of land, will not admit of a doubt." By Lord Ellenborough, Ch. J. *Rex v. Corporation of Bath*, 14 E. R. 609. *supp.* 91.

64. See also the case of *Rex v. Rochdale Waterwork Company*, 1 M. & S. 634. *supp.* 106. which the court said they could not distinguish from the last-mentioned case, and where they ruled in consonance with it.

65. A rate, in the parish where an outlet of the drain lay, upon the commissioners of the Beverley and Barnston Drainage, in respect of certain lands and buildings purchased by them and converted into a drain, under a certain act of parliament, was quashed where it appeared that no profit arose from such drain in this particular parish, but accrued to the owners of lands in other parishes drained by means of such outlet. "I know of no instance where a canal

company has been held rateable for the mere space occupied by the canal in a particular parish, if no tolls were received or became due there; and I cannot distinguish between land converted into a drainage and a canal: in this case we are clearly of opinion, that the commissioners, having no beneficial occupation, either for themselves or others, cannot be rated in Sculcoates, otherwise a question of beneficial occupation would arise in every case where a canal or road passes through a parish in which the tolls do not become due, which has never been considered liable to be rated in such parishes, except where the benefit accrues." *By Lord Ellenborough, Ch. J. Rex v. Sculcoates*, 12 *E. R.* 40. *supp.* 72.

66. The lessee and occupier of an ancient and exclusive ferry, not being an *inhabitant* resident within the township in which one of the *termini* of the ferry is situate, is not liable to be rated there for any share of the tolls of such ferry; for supposing a ferry to be real property, it is not such property as is mentioned in the 45 *Eliz.* the occupancy of which subjects the party to be rated to the relief of the poor; he is therefore neither an *inhabitant*, nor such an occupier as can be rated for that parish. *Rex v. Nicholson*, 12 *E. R.* 530. *supp.* 78.

67. See more of this case *ante Art.* 57.

68. And upon a subsequent occasion, the owner of a ferry who resided in one parish, but took the profits of the ferry by his servants and agents in another parish where they were collected, and where one of the *termini* of the ferry was situated, and on which shore the ferry-boats were secured by means of a post in the ground, (the soil itself at the landing-place being the king's common highway) and the owner of the ferry having no exclusive possession of it or property in it, was held not liable to be rated for the profits of the ferry in such latter parish. *Williams v. Jones*, 12 *E. R.* 546. *supp.* 85.

69. The lessee of the tolls of a public bridge was held not to be rateable, whatever rent he paid, where it did not appear that he was the occupier of any local visible property within the parish, or that he was an *inhabitant* there, or made any profit of the tolls. *Rex v. Eyre*, 12 *E. R.* 416.*

70. But where a profit is made by a bridge, it seems that the tolls for passing it are rateable in the parish where they are collected and the bridge is locally situate, and if the *termini* be in dif-

* Turnpike tolls are not rateable. See *Nol. c.* 6. s. 2.

ferent parishes, and *there be a collection of tolls in each*, such tolls are rateable in each. See case of *Putney Bridge*, i. 159. *in notis*.

71. A rate was made upon the lessee of the fishings of the halves and halvendoles, with the appurtenances to the halves due, and accustomed within the river Severn, between certain limits within a manor bordering on the said river, and confirmed at the sessions; the court would not reverse the order, not being satisfied that the sessions could not, upon any reasonable ground, conclude that by this grant of halves and halvendoles, &c. (of the meaning of which terms no evidence was offered to the court) some kind of interest in the soil was conveyed: the usage of landing nets upon the shore and fixing them to the bed of the river, by the appellants, might, it was said, seem to imply a grant of something connected with the soil. *Rex v. Ellis*, 1 M. & S. 652. *supp.* 107.

d. Ships, and where rateable.

72. Ships are rateable to the poor, and in the parish to which they belong. *Rex v. White*, 4 T. R. 771. i. 202.

73. But ships which lie in a parish where the owner does not reside, cannot be assessed there, although he have a warehouse and counting-house in the parish, and although they be registered there, for this does not sufficiently constitute inhabitancy to make the owner rateable. See *Nolan*, c. 11. cites *Rex v. Liverpool*, 8 E. R. 455. n. (b), and *Rex v. Collison*, *ib.* n. (c).

74. It seems from one case that the ship should be locally within the parish at the time of the rate. *Rex v. Howard*, 8 E. R. 457. n.

75. In a subsequent case of a coasting vessel, it was decided that the owners are liable to be rated in respect of it in that parish where they themselves reside, the ship is registered, her cargoes regularly delivered, and her freight paid, and which is the home of the vessel when unemployed, although at the time of making the rate the ship were not actually within the parish. But they are not liable to be rated for a ship which was never locally within the parish, although the profits be received by them there. *Rex v. Shepherd and Others*, 1 B. & A. 109.

76. The owners of packet-boats employed under a personal contract with the post-masters in carrying the mails, &c. between Dublin and Holyhead were held liable to be rated for their profits at the latter place, where the owners resided, from whence the voyages commenced, where the boats were laid up and repaired, and

where the passage-money was in part actually earned, "the possession of such a vessel within a parish by an inhabitant actually residing there, and making profit of it, constitutes so much of his local ability to contribute to the maintenance of the poor under the description in the 43 *Eliz.*" *Rex v. Jones and Others*, 8 *E. R.* 461 *supp.* 165.

77. The circumstance of the boats being registered elsewhere was considered of no importance. *ibid.*

c. Tithes.

78. A parson is liable to be rated for the profits of his glebe lands and tithes; and this although he let them out to his parishioners. *Rex v. Turner*, i. 126. *Rex v. Bartlett*, i. 127. *n.* See also *Rex v. Skingle*, i. 127.

79. In a case where the parson let his tithes to farm to one who let them out again, it was held clear that the liability to pay the rate attached upon the parson or his farmer, and not upon the under-tenant of the land. *Rex v. Lambeth*, i. 127. *Str.* 524.

80. Payments in lieu of tithes are rateable. *Lowndes v. Horn*, i. 156. *Bl. Rep.* 1252. *Rann v. Picking*, i. 162.

81. But the parochial assessments for the vicar of St. Michael in Coventry, established by 19 *Geo. 3. c. 60.* are not rateable to the poor. *Rex v. Toms, Doug.* 401. i. 159.

82. The proprietors of the tithes of fish, tithable by custom, are liable to be rated to the poor. *Rex v. Carlyon*, 3 *T. R.* 385. i. 186.

f. Mines.

83. Iron mines are not rateable. *Rex v. Cunningham and Others*, 5 *E. R.* 478. i. 235.

84. Nor lead mines. "Nothing can be clearer than that these mines are not within the letter of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines; if they had meant to include them, they would either have enumerated them, or used the general word *mines.*" *Governor and Company, for smelting Lead, v. Richardson and Others*, *Burr.* 1341. i. 137.

85. But see *Rex v. Baptist Mill Company*, 1 *M. & S.* 612. where Lord Ellenborough said, that the judges who had held the expression to amount to an exclusion of other mines had generally coupled it with this reason, that other mines are subject to risk.

86. The lessee of a lead mine under the crown, with the lot and cope, is rateable for the lot and cope. *Rowls v. Gell, Comp.* 451. 149.

87. The lessee of a coal mine is rateable, although he derive no profit from the mine. *Rex v. Parrott and Others*, 5 T. R. 480. i. 188.

88. But where the mine itself is exhausted, although the rent be still payable, the lessee is not rateable, for the subject matter of profit is gone. *Rex v. Bedworth*, 8 E. R. 387.

89. Toll, tin, and farm dues are rateable. *Rex v. St. Agnes*, 3 T. R. 480. i. 188.

90. Landlords, not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig and search for pits, &c. reserving a certain annual rent, and also certain portions of the ore which should be raised, are not rateable for such certain rent on ore being raised. The court, however, said, that if the tenants should raise the ore, the trustees would then be entitled to certain proportions, and that such profits might come under a different rule. *Rex v. Bishop of Rochester and Others*, 12 E. R. 353.

91. The lessees under the lord of a manor of lot and free share of all calamine raised within the manor, were held liable to be rated to the poor as occupiers of land in the parish where the manor lies. None of them were resident in the parish. *Rex v. Baptist Mill Company*, 1 M. & S. 612. *supp.* 101.

92. Portion of lead ore (when smelted) reserved by lease to the owner of the mine, was held to be in the nature of rent, and not rateable. *Rex v. Earl of Pomfret and Others*, 5 M. & S. 139.

93. Lime works, slate works, and clay pits are rateable in the hands of the occupier. *Rex v. Alberbury*, 1 E. R. 534. i. 223. *Rex v. Woodland*, 2 E. R. 164. i. 228. *Rex v. Brown*, 8 E. R. 528. n.

g. Woods, and Miscellaneous.

94. Woods consisting of timber-trees, where the underwood is left for standards, are not rateable to the poor. *Rex v. Minchin Tampton*, i. 136. The sessions found that such underwood was timber, by the custom of the country.

95. But saleable underwoods are at all times rateable to the relief of the poor, according to the improvement in their value, or in the rent which might fairly be expected from them, and not merely in those years when they are cut down. *Rex v. Mirfield*, 10 E. R. 119. *supp.* 68.

96. The quit-rents and other casual profits of a manor are rateable to the poor. *Res v. Vandervall, Burr.* 991. i. 131.

97. Ground rents are rateable. *Res v. Gibbs*, i. 125. But generally speaking, are not rateable, *eo nomine*. *Le Blanc, J. v. Bishop of Rochester*, 12 E. R. 555.

98. A mere easement, such as a way-leave, cannot be rated. *Res v. Jolliffe*, 2 T. R. 90. i. 181., but see *Res v. Bell, ante Art.*

99. A common in gross is a tenement: and it would seem from thence that it is rateable, by *Lord Ellenborough, Ch. J. in v. Watson*, 5 E. R. 480. i. 237. See *Nol. c. 6. s. 2. Res v. Bank*, 4 M. & S. 222.

VII. *Levy and Distressing for the Rate.*

100. Under 43 Elis. c. 2. s. 4. the poor-rate may be levied by distress and sale by warrant from two justices; and if no distress can be made the party may be committed until payment.

101. By s. 8. the warrant may be granted as well by city as by other magistrates.

102. By 28 Geo. 3. c. 49. justices for adjoining counties, personally resident in one, may grant warrants of distress for either.

103. By 17 Geo. 2. c. 38. s. 7. the goods may be levied not only in the place for which the assessment is made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within such county, &c., then on oath made before a justice of any other county, &c., which oath shall be certified under his hand on the warrant, the goods may be levied in such other county.

104. By s. 11. succeeding overseers may levy arrears.

105. By 54 Geo. 3. c. 170. s. 12. the goods of persons neglecting to pay the poor-rate, church sess, or highway sess, of any district, parish, township, or hamlet, for the space of seven days after demand, may be distrained, not only within such district, &c. but also within any other district, &c. within the same county or jurisdiction; and if sufficient distress cannot be found within the same county, &c., then, upon oath thereof made before any one justice of any other county, &c. in which any of the goods of such persons shall be found (which oath such justice shall administer and certify, by indorsing in his handwriting, his name on the warrant granted to make such distress) the goods of the said person shall be liable to such distress and sale, in such other county, &c., and may be distrained and sold in the same manner as if the same had been found within the district, &c. for which such rate had been made or was due.

106. By 41 Geo. 3. c. 23. s. 1. where the sessions quash a rate, all money charged on any person by such rate, shall be levied as if no appeal had been, and taken as payment on account of the next effective rate of such parish, &c.

107. See sects. 2 and 3. of this statute under title *Appeal against the Poor-rate, Arts.* 9. 10.

108. By s. 7. if upon appeal the court order the name of any person to be inserted in the rate, and such person to be rated, or the sum at which

ry one is rated to be increased, such several sums shall be recoverable in the same manner as if originally inserted in the rate.

109. A warrant to levy a poor-rate directed to the constable of *A.* where the party had land, but no goods, was executed by the constable of *A.* in the adjoining parish of *B.*, where the party had goods; and by Holt, Chief Justice, the levy was well made. *Hampden v. Lammas, Lord Raymond*, 735. i. 250.

110. But goods taken on a distress for a poor-rate for lands not in the occupation of the party rated, may be replevied though the justices have confirmed the rate; for to assess a man for what he does not occupy is an excess of jurisdiction. *Milward v. Caffin*, 2 N. Rep. 1330. i. 256.

111. It seems that one warrant of distress may issue to enforce payment of several distinct assessments under different rates due in the same person; but it is better that separate warrants should be granted, since if one of the rates be bad this will vitiate the whole warrant. *ibid.*

112. A poor rate cannot be distrained for under a general warrant made before the rate; there should be a special warrant, founded on oath of refusal to pay. *Tracy v. Talbot, Salk.* 531. i. 250.

113. But a distress may be levied on a warrant made before the rate, for which the rate is made, has expired. *Charlwood v. Best*, 250.

114. In one case a *mandamus* was directed to the justices to sign a warrant of distress, although it appeared that the party had not been summoned to shew cause why he had not paid the rate, and that the justices had on that account refused to grant the warrant. *Rex v. Justices of Middlesex*, i. 250.

115. But where the person rated died intestate, and two justices issued a warrant of distress against his administrator, reciting that the rate had been lawfully demanded of the intestate, and of his widow and representative, since his decease, the Court held that a distress, made by virtue of this warrant of the cattle of the deceased in the hands of his administrator, was not legal; and that if the distress could in such case be made, the administrator ought to have been summoned. *Stevens v. Evans, Burr.* 1152. i. 255.

116. And it seems now to be settled, that before a warrant of distress can legally issue to levy a poor-rate, a demand should be made, and the party should be summoned and heard. *Charlwood v. Best*, i. 250. *Rex v. Benn*, 6 T. R. 198. i. 261. *Tracey v. Talbot*, i. 250.

117. And that the court will only grant a *mandamus* to the justices to receive such information and complaint as have been made, shall be duly laid before them against such persons as have neglected or refused, or shall neglect or refuse to pay the sums assessed. *Rex v. Benn*, *ib.*

118. For the granting a warrant of distress is a judicial act in the justices; and they must of course summon the party, and exercise a discretion after inquiring into all the circumstances of the case. *Harper v. Carr*, 7 T. R. 270.

119. But upon such hearing, the magistrates can only go into the matter as tends to shew payment of the rate, an excuse for non-payment, or that it is itself a nullity; the sessions alone are the judges of the proportion and equality of the rate. See the case collected, 1 Nol. c. 14.

120. Where the landlord has always paid the poor-rate, and the landlord tender the rate for the land in the occupation of a tenant, the overseers must receive it, and a warrant ought not to be granted to distrain upon the tenant. *Coxen, Doug.* 426. i. 24.

121. Overseers levying a poor rate under a warrant of distress may retain the necessary expences of the distress and sale, out of the produce of the goods sold. *Moyse v. Cookedge, Willes.* 636. i. 11.

122. A second distress may be taken under the same warrant although enough might have been taken on the first distress; but then the party must have seized for the whole sum due, and mistaken the value of the goods; for where a man has an entire duty, he shall not split the entire sum, and distrain part of it at one time and part of it at another. *Hutchin v. Chambers, Burr.* 579. i. 255.

123. If the officers take an excessive distress, the party injured may have a special action on the statute of Marlbridge; but a general action of trespass will not lie. *ibid.*

124. A distress for a poor-rate for lands not in the occupation of the party, may be replevied, notwithstanding the sessions have confirmed the rate. *Milward v. Caffin*, 2 Bl. Rep. 1330. i. 256.

125. Overseers cannot be guilty of trespass in levying a poor-rate by distress, although the rate be objectionable, if the party have not appealed to the sessions. *Durrant v. Boys*, 6 T. R. 58. i. 262.

126. Where the defendants, in order to levy a poor rate under a warrant of distress by two justices, broke and entered the house, and broke the windows, &c., it was held that they might be sued in trespass without a previous demand of the perusal and copy of

Relief from paying.]

POOR RATE.

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warrant according to 24 Geo. 3. c. 44. s. 6. *Bell v. Oakley and others*, 2 M. & S. 259.

127. With respect to the form of the warrant, it should state specially the name of the person whose goods are to be distrained, the rate upon which it is granted, and the amount of the sum to be levied. See 1 Nol. c. 14.

128. No action of debt lies for a poor rate. By *Denison J. in Evans v. Evans*, Burr. 1152. Bl. Rep. 284.

129. See further titles *Distress, Overseers, Sessions.*

See also 59 Geo. 3. c. 12 Addenda AA

IX. Relief from paying.

130. By 54 Geo. 3. c. 170. s. 11. any two justices in petty sessions, on application by any person rated to any rates, and proof of his or her inability through poverty to pay, with the consent of the churchwardens and overseers of the district, parish, township, or hamlet, or of such other person, as is or are competent to act, under the authority for which such person is rated, of any act or acts of parliament, for the management or direction of the poor of any such district, &c. may order and direct that such person shall be excused from the payment of such rate, and strike out his or her name therefrom; and the sum at which such person is so rated in such rate shall not thereafter be collected, or any person charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same.

131. A certiorari will not lie to remove the poor rate itself. *Rex v. Uttometer*, i. 292. *Rex v. Shrewsbury*, i. 293.

132. In a late case, the court of King's Bench held that they had authority to amend a poor rate. *Rex v. Milton*, 3 B. & A. 112.

133. See title *Appeal*, div. II.

X. Rating in Aid.

a. OF RATING PARISHES WITHIN THE HUNDRED.

THE COUNTY.

b. — THE PLACES LIABLE TO BE RATED.

c. — THE FORM OF THE RATE.

a. Of Rating within the Hundred.

1. By 43 Eliz. c. 2 s. 3. if the justices perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of

money for the purposes aforesaid, two of them may rate and assess as aforesaid any other of other parishes or out of any parish within the hundred where the said parish is, to pay such sum and sums of money to the church-wardens and overseers of the said poor parish for the said purposes as the said justices shall think fit according to the intent of this law.

2. The two justices, in exercising their judgment for the relief of a poor parish, ought to tax the next parish within the hundred. *Anonymous*, 16 *Vin. Abr.* 341. i. 349.

3. And as the jurisdiction of the two justices only extends to the hundred, an order made by them stating that the parishes taxed are within the county of such a city is bad, for in cities there are no hundreds, except perhaps in London, whose wards are said to resemble hundreds. *St. Benedict v. St. Peter*, 11 *Mod.* 269. i. 350.

Of rating within the County.

4. By 43 *Eliz. c. 2. s. 3.* (see the former part of the section above) if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes unable to provide for themselves as aforesaid, then the justices at their general quarter sessions, shall rate and assess as aforesaid any other of other parishes or out of any parish within the said county, for the purposes aforesaid, as in their discretion shall seem fit.

5. The county, that is, those parishes that are not within the hundred in which the poor parish lies, cannot be rated in aid, unless the parishes that are within the hundred be unable to afford relief. *Anon.* i. 352.

6. But it is not necessary that two justices should adjudge the hundred incapable of contributing relief before the sessions can charge a parish out of the hundred. *Rex v. Percival*, *Str.* 56. i. 352.

7. Both jurisdictions are original, but they are different in all respects; the two justices have no power out of the hundred, nor the sessions within it. There needs be no appeal from an adjudication of the two justices, for that would be to appeal from a nullity. *By Eyre*, *Ch. J. ibid.*

8. The sessions may rate a parish within the county of a city, although a city have no hundreds. *St. Benedict v. St. Peter*, 11 *Mod.* 269. i. 350.

9. But the county sessions cannot rate a parish within the jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction. *Rex v. Holbeach*, 4 *T. R.* 770. i. 334.

b. Of Places liable to be rated.

10. One vill may be rated in aid of another vill in the same ish; for although the 43 *Eliz. c. 2.* only mentions parishes; yet s are within the equity of it. *Anonymous, Fo. 25. i. 353.*

1. But two justices cannot rate in aid places where there are no idreds, or equivalent divisions. *Rex. v. St. Benedict, Fo. 43. 53*.*

2. But they may rate a place within a liberty, a soke, or any er division which is equivalent to or synonymous with the word idred. *Rex v. Milland, Burr. 576. i. 354.*

3. The inhabitants of an extra-parochial place may be rated aid of an adjoining parish. *Rex v. Clarendon Park, 16 Vin. Abr. . Rex v. Boroughfen, i. 351.*

4. An order taxing one parish in aid of another is good, ough the two parishes together with others be incorporated by of parliament for the maintenance of their poor with fixed tas of contribution between each other, under special officers, o are empowered to purchase land for the erection of poor houses l for a burial ground, there being a proviso in the act, in general ns, that nothing therein contained, should extend to repeal or en the power of justices of peace, "to tax parishes in aid of ers by virtue of 43 *Eliz. c. 2.* as fully as if this act had not n made." *Rex v. St. Helen's, 2. E. R. 217. i. 357.*

c. Of the Form of the Rate.

15. The order rating parishes in aid needs only describe the aries generally, and not the particular persons assessed, for the tices are only to assess the quantum, and then the rate is to be de by the overseers of the poor parish. *Rex v. St. Rumbald's, in. 258. i. 346.*

16. The justices may tax particular persons in aid to that parish ich cannot relieve its own poor, or they may assess the whole rish in a certain sum, and leave it to the overseer to levy it on the dividuals. *Rex v. Eastchurch, Salk. 480. i. 350. Rex v. Knightly mb. 309. Rex v. Boroughfen, i. 351.*

17. The order must show that the assessment was made by the

* Nor a parish within their jurisdiction in aid of one that is not so. *Wolbot v. Hubble, Str. 1154. Rex v. Sainsbury, 4 T. R. 45.*

justices; for they cannot delegate their authority, and an order therefore was quashed, because the justices had referred their power of assessing and rating their parishioners to the churchwardens and the overseers; whereas by 43 *Eliz. c. 2.* they are to make the rate on all, or on particular persons. *Rex v. St. Peter and St. Paul, Str.* 1114. i. 349.

18. And it must show that the contributing parish is out of the parish to which the aid is given, and it must be expressly stated to be so. *Rex v. Boroughfen, i.* 348.

19. So also it should state that the poor parish was unable without assistance to provide for its own poor, or words to that effect. *Rex v. Little Glen, Comb.* 241, i. 347.

20. And it is not sufficient merely to state that the poor parish was unable to provide for its own poor, but the two justices, where the rate is on a parish in the hundred, and the sessions where the rate is on a parish in the county and out of the hundred, must adjudge that the poor parish was unable to make such provision. *Comd v. St. Mary, Lincoln, 16 Vin. Abr.* 431. i. 347.

21. But the very words of the statute need not be pursued: thus an order stating the parish to be "oppressed," was held well enough. *Rex v. Little Glen, i.* 347.

22. So if an order made by two justices omit to state that the parish rated is within the hundred, it is bad. *Rex v. Boroughfen, i.* 348.

23. Therefore an order stating that the parishes rated were within the county of the city of Norwich was held bad. *St. Benedict v. St. Peter's, 11 Mod.* 269. i. 350.

24. And a sum certain must be mentioned in the order, and not a rate made at so much in the pound. *Rex v. Telscomb, Str.* 514. i. 348.

25. Therefore an order of two justices, adjudging that the parish of St. Mary was unable to maintain its own poor, and ordering the churchwarden of St. Peter to assess, raise, and levy sixty pounds for the maintaining of the poor of St. Mary, though bad as to the delegation to the churchwarden, was held good as to the gross sum. *Rex v. St. Peter and St. Paul, Str.* 1114. i. 349.

26. And the court would not allow an objection, that the ordering a gross sum for the year was unreasonable, since the inability of the parish might cease before the year expired. *Rex v. Knights, Comb.* 309. i. 347.

27. An order stating that, of two villis within a parish, one was

poor, one was rich, and did not pay half so much to the poor as the former, was quashed for uncertainty. *Anon.* i. 348.

28. So an order made by two justices "to contribute until we see fit to order the contrary," is bad. *Rex v. Marlborough*, 16 *Vin. Abr.* 416. i. 349.

29. But the court seems to have inclined to think that a rate that occupiers of land in the parish of *A.* should contribute 20*l.* a year, by equal monthly payments to the parish of *B.* so long as *B.* shall be overburthened with poor, and the parish of *A.* have none, would be good. *Rex v. Eastchurch, Salk.* 480. i. 350*.

X. Evidence and Miscellaneous.

30. Upon an appeal against a rate made under a private act of parliament, under which both parties were interested, the respondent appearing to answer the appeal, and admitting, when called upon by the sessions, that he had made the rate by virtue of a certain act of parliament, a printed copy of which, according to the common form, was produced in court by the appellants, and the sessions having thereupon entered into the merits of the appeal, and decided upon them, notwithstanding an objection made by the respondents, that the appellants had not given legal evidence of the jurisdiction of the sessions ~~to~~ receive the appeal, for want of proof of the printed copy having been examined with the rolls of parliament; the court of King's Bench refused to quash their order, which was removed by certiorari. And Lord Ellenborough, Ch. J. said, that the appellants had by their appeal assumed that the sessions had jurisdiction; the respondent, if he meant to deny the jurisdiction, might have staid away, but having admitted that he made a rate under that act of parliament, it would be in derogation of justice to allow his availing himself of such an objection. *Rex v. Shaw*, 13 *E. R.* 479. *supp.* 36.

31. It was formerly law, that inhabitants actually rated were incompetent, as being interested, witnesses on questions affecting the poor-rate and settlements; the objection, however, was not held to extend to liability to be rated. *Rex v. Prosser*, 4 *T. R.* 17.

32. *Rex v. South Lynn*, 5 *T. R.* 667. *Rex v. Kirdford*, 2 *E. R.* 361. *Rex v. Terrington*, 15 *E. R.* 471.

33. And in one case the court held, that persons appointed by an act of parliament governors and directors of the poor of a cer-

* A mandamus will issue where the justices, in or out of sessions, refuse to rate in aid. See *Rex v. Holbeach*, 4 *T. R.* 778. ii. 355.

tain parish, and made liable, upon appeal against a rate made by them, to the payment of costs in case the sessions should award any to the appellants, could not be witnesses on such appeal, (although in fact, however, only trustees, and entitled to be reimbursed such costs out of the parochial fund) since they were parties to the cause, and liable to the costs in the first instance. *Rex v. St. Mary Magdalen*, 3 E. R. 7. ii. 767.

33. It was held too, that since all rated inhabitants were to be considered as parties, their declarations might be admitted, not only against themselves, but also against the other rated inhabitants. *Rex v. Hardwicke*, 11 E. R. 578. *Rex v. Whitley and another*, 1 M. & S. 638.

34. Nor was it held necessary that the witness should be first called, and refuse to be examined. *Rex v. Whitley and another*, 1 M. & S. 638.

35. Now by 54 Geo. 3. c. 170. s. 9. no inhabitant, or person rated, or liable to be rated to any rates or sesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court, or person or persons whatsoever, be deemed by reason thereof an incompetent witness for or against such district, &c. in any matter relating to such rates or sesses, or to the boundary between such district, &c. and any adjoining district, &c. or to any order of removal to or from such district, &c. or the settlement of any pauper in such district, &c. or touching any bastards chargeable, or likely to become chargeable to such district, &c. or the recovering of any sum for the charges or maintenance of such bastards, or the election or appointment of any officer, or the allowance of the accounts of any officer of any such district, &c.

36. Where, upon an appeal, before the passing of the last-mentioned act, a witness, examined on the *voir dire*, stated that he was the occupier of a tenement, but was not rated to any public rate or tax, the court held that this answer must be taken to be true for the purpose, and that it could not be objected to his examination in chief, that the best evidence of the fact was not given by the production of the rate itself. *Rex v. Gisburn*, 15 E. R. 57.

37. On an issue to try whether the inhabitants of A. were immemorially bound to repair a chapel, the owner of the property was held not to be a competent witness to negative the liability, although he were not upon the rate, and the rate were in fact paid by his lessec. *Rhodes v. Ainsworth*, 1 B. & A. 87.

38. As to evidence of personal property being productive, see *Rex v. Darlington*, i. 215.

See, in Appendix, 59 Geo. 3. c. 12. containing several enactments as to rating owners instead of occupiers, distraining, &c. &c.

RELIEF & ORDERING OF THE POOR.

- I. OF AFFORDING RELIEF GENERALLY.
 - II. OF RELIEVING ARMY AND NAVY PENSIONERS, AND THE FAMILIES OF SEAMEN IN MERCHANTS' SERVICE.
 - III. ————— POOR PRISONERS FOR DEBT.
 - IV. OF THE FORM OF THE ORDER, AND MISCELLANEOUS.
-

I. Of affording Relief generally.

1. See titles *Maintenance of Relations, Overseers, div. VII., X., also Incorporated Parishes and Workhouses. & Chaldons &c. &c.*

2. By 59 Geo. 3. c. 12. s. 12. the churchwardens and overseers of any parish, with the consent of the inhabitants in vestry, may take into their hands any land or ground belonging to such parish, or to the churchwardens or overseers, or to the poor thereof, or purchase, or hire, or take, or lease, on account of the parish, any suitable portion or portions of the land within or near to such parish, not exceeding 20 acres in the whole; and may employ in the cultivation of such land, on account of the parish, any such persons as they are by law directed to set to work, and pay such poor persons so employed as are not supported by the parish, reasonable wages for such work; such persons to have the like remedies for the recovery of their wages, and to be subject to the same punishment for misbehaviour as other labourers in husbandry.

3. By s. 13. the churchwardens, &c. with like consent, &c. may let any portions of such parish land, or land purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be occupied for the benefit and on the own account of such person, at such reasonable rent and for such term as fixed by the vestry.

4. By 3 Car. 1. c. 4. s. 1. the churchwardens and overseers, with the consent of two justices, (one *quorum*) within their liberties, where more than one, or of one justice only, where not more than one, may set up any trade or occupation for setting on work and better relief of the poor.

5. By 3 W. & M. c. 11. s. 11. there shall be provided and kept in every parish (at the charge of the same parish) a book wherein the names of all such persons who receive collection shall be registered, with the day and year when first admitted to have relief, and the occasion thereof: and yearly in Easter week (or as often as it shall be thought convenient) the parishioners of every parish shall meet in their vestry, or other usual place of meeting, in the same parish, before whom the said book shall be produced; and all persons receiving collection shall be called over, and the reasons of their taking relief examined, and a new list made and entered

of such persons as they shall think fit and allow to receive collection. And no other person shall be allowed collection at the charge of the said parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near of next adjoining, or by order of the justices in their respective quarter sessions, except in cases of pestilential diseases, plague, or small-pox, in respect of such families only as are therewith infected.

6. The 8 and 9 *W. 3.* as to badging the poor, is repealed by 50 *Geo. 3. c. 52.*

7. By 9 *Geo. 1. c. 7.* no justice shall order relief to any poor person until oath made before him of some reasonable ground for such relief, and that the same person had by himself, herself, or some other, applied for relief to the parishioners of the parish, at some vestry or other public meeting of the said parishioners, or to two overseers of such parish, and was by them refused to be relieved; and until such justice hath summoned two overseers, to show cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear before such justice.

8. By s. 2. the person whom such justice shall think fit to order to be relieved, shall be entered in such book so to be kept by the parish, (as prescribed by 3. *W. & M. c. 11.*) as one of those who is to receive collection, so long as the cause for such relief continues, and no longer; and no officer of any parish shall (except upon sudden and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book as a person entitled to collection, on pain of forfeiting 5*l.* to be levied by distress and sale, by warrant of two justices of the same county who shall have examined into, and found him guilty of such offence; such sum to be applied to the use of the poor of the said parish, by direction of the said justice or justices.

9. By 59 *Geo. 3. c. 12.* (regulating select vestries) s. 1. overseers shall not, (except in cases of sudden emergency, or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices in the cases hereinafter provided for) give any further or other relief or allowance to the poor than such as shall be ordered by the select vestry.

10. By s. 5. every order for relief in parishes not having a select vestry, shall be made by two or more justices, who shall take into consideration the character of the applicant for relief, and the cause of granting relief shall be expressly stated in such order, which order shall not extend longer than one month from the date: provided that in cases of emergency one justice may order such relief as the case shall require, stating the circumstances in the order; but no person shall be entitled to relief under such order for a longer time than 14 days from the date, nor shall the order be of any force after the next petty session within the hundred or division where such parish lies.

11. By s. 29. whenever it shall appear to the justices, or to the general or select vestry, or to such guardians, governors, or directors as mentioned in the act, or to the overseers, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect, or wilful misconduct, have been able to maintain himself, or to support his family, the overseers, by direction of the justices, or of the general or

select vestry, or of such guardians, governors, or directors, where application shall have been made to them, may advance money weekly or otherwise, as may be requisite to the person so applying, by way of loan only, and take his receipt for and engagement to repay every sum so advanced (for which no stamp duty shall be required,) and any two justices upon the application (within one year after any such loan or loans) of one overseer for the time being may summon the person to whom any money shall have been so advanced; and if upon examination by such justices into his circumstances, it shall appear that such person is able, by weekly instalments or otherwise, to repay the whole or any part of the money so advanced to him, and for which he shall have given any such receipt and engagement, such justices may make an order under their hands and seals for the repayment of the whole or of any part of such money, at such time and times and in such proportions and manner as they shall think fit; and, upon every default of payment, by their warrant may commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid.

12. Overseers cannot be ordered to relieve poor persons in a different parish: thus an order upon the overseers of *A.* to repair to the parish of *D.*, and relieve *C.* there, is bad, although *C.*'s settlement be in *A.* *Clypton v. Ravistock.* i. 402. But see 2 *Nol.* 324. and authorities there cited.

13. Overseers are bound to relieve casual poor. See *Simmons v. Willmott*, and other cases, title *Overseers, Arts.* 194, 195, 196.

14. An order may be made to relieve and take care of a servant whose limb is fractured by a fall when sitting on his master's waggon, for such an object is considered as casual poor in the parish where the accident happens, and the overseers are liable for the expenses of his support and cure, and not his master. *Newby v. Wiltshire, Cald.* 527. i. 409.

II. Of Relieving Army and Navy Pensioners, and the Families of Merchant Seamen.

15. By 59 Geo. 3. c. 12. s. 30. when any person entitled to or in receipt of any pension, superannuation, or other allowance, in respect of his service in the navy, royal marines, army or ordnance, shall apply to any parish for relief, for himself or for his wife or family, the churchwardens and overseers may require the person applying for relief, before the same shall be granted, to assign to them the next quarterly or other payment or allowance which shall become payable to him, to the intent that they may receive the same, and retain for the use of the parish so much thereof as shall have been by them advanced for the relief of such person, or of his wife or family residing with him in such parish; and the churchwardens and overseers of any parish, at the request of any person entitled to or in the receipt of any such pension, superannuation, or other allowance, may advance for his support or the support of his family, any weekly sum not

exceeding the rate of his pension or allowance, to be repaid by and out of the next quarterly or other payment of such pension or allowance, and take an assignment thereof by way of security for the money so to be advanced, any thing in any act or acts to the contrary notwithstanding; and every assignment to be made of any such pension, superannuation, or allowance for the purposes of this act, shall be exempt from stamp duty*. And every such assignment attested by one justice, of any quarterly or other payment, payable by the commissioners for the affairs of the Royal Hospitals of Chelsea or Greenwich, or by the payment of the Royal Marines, or the treasurer of the Board of Ordnance respectively, and made as aforesaid to such churchwardens and overseers, shall be transmitted by them, at least one month before such payment shall become due, under cover, addressed to the paymaster general of his Majesty's forces, with the words, "Chelsea pensioner" written thereon, or to the paymaster of pensions at Greenwich Hospital, with the the words "Greenwich pensioner" written thereon, or to the paymaster of the Royal Marines, with the words "Royal Marine pensioner" written thereon, or to the secretary of the Board of Ordnance, with the words "Ordnance pensioner" written thereon, who shall thereupon respectively cause the said payment to be made to the churchwardens or overseers for whose security the assignment shall have been made, in the same manner as the said payment would have been made to the person assigning the same, if no such assignment had been made; and such churchwardens and overseers, or any one or more of them may receive the same, and retain thereout for the use of the parish, so much as shall have been advanced on security thereof, and forthwith pay the residue (if any be) to the person by whom such assignment was made; and if any question shall arise between the pensioner or person making any such assignment and the churchwardens and overseers touching the amount which shall be due and payable to them by virtue of any such assignment, the same shall be determined in a summary way by one justice, and whose order shall be final; provided that no such assignment shall entitle the churchwardens and overseers to receive the pension or allowance assigned, if the party assigning die before the time when such pension or allowance would have become payable to him if no such assignment had been made.

16. By s. 31. when any person entitled to or in receipt of any such pension, &c. leaves his wife or family chargeable to any parish, or suffers them to become so, two justices upon complaint by any one churchwarden or overseer, verified on oath, may by order under their hands and seals direct the next payment which shall become due of such pension, &c. to be made to the churchwardens and overseers of the parish, to which such wife, &c. is chargeable, and any one or more of such churchwardens and overseers shall transmit such order to the commissioners for the Royal Hospitals at Chelsea and Greenwich, or the secretary of the Board of Ordnance, in like manner as the assignment directed by s. 30. to be transmitted to the paymaster-general, &c. which said paymaster-general or paymaster of pensions at Greenwich, or treasurer of the Board of Ordnance, shall, upon proof that the person is living who would have been intitled to the pension, &c. if no such order had been made, pay the

* For the form see the statute.

same to the said churchwardens and overseers. Such money when received, to be applied by the churchwardens and overseers for the use and indemnity of the parish, rendering the surplus to the pensioner, &c. and upon the receipt of any such order as aforesaid, payment of the pension, &c. shall be suspended until proof given that the churchwardens and overseers in such order named, are intitled to receive the same.

17. By s. 32. when the wife or family of any seaman (not being in his Majesty's service) shall during his absence on any voyage become chargeable to any parish, two justices upon complaint by the churchwardens and overseers, verified on oath, may, by order under their hands and seals, direct the acting owner, ship's husband or agent of the vessel to which such seaman belongs, to pay out of his wages which may become due to such seaman to the churchwardens and overseers of the parish to which the said wife or family is chargeable, so much as shall have been expended for their maintenance; such sum to be ascertained in case of any dispute by two justices, whose order shall be final; and such owner, &c. shall so pay upon production of the said order, and the payment to or receipt of any such churchwarden or overseer, shall be a good discharge for so much wages so paid; in case of refusal by such owner, &c. to pay upon production of such order the money thereby directed to be paid, or so much wages as are actually due, the same may be recovered in same manner as the poor-rate in arrear against persons chargeable thereto, but nothing in this act shall authorize or compel the payment of any money by such owner, &c. until the voyage in which the vessel is engaged be completed, nor beyond the sum actually due as wages or otherwise.

III. Relief of Poor Prisoners for Debt.

18. By 19 Car. 2. c. 4. s. 1. the justices of the respective counties, at any of their sessions, or the major part of them then there assembled, if they shall find it needful so to do, may provide a stock of such materials as they find it convenient for the setting poor prisoners on work, in such manner and by such ways as other county charges by the laws and statutes of the realm are, and may be levied and raised*; and pay and provide fit persons to oversee and set such prisoners on work, and make such orders for accounts of and concerning the premises as shall by them be thought needful, and for punishment of neglects and other abuses, and for bestowing of the profit arising by the labour of the prisoners so set on work, for their relief, which shall be duly observed; and may alter, revoke, or amend such their orders from time to time; provided that no parish be rated above sixpence by the week towards the premises, having respect to the respective values of the several parishes.

19. By s. 2. any sheriff of the respective counties, having the custody of the gaol, or such persons who have the custody of the gaol, with the consent of three justices, (one to be of the quorum,) may, upon emergent occasions in the respective counties, provide other safe places for the removal of sick or other persons from and out of the ordinary gaols; the same places to be employed for the reception and custody of the

* See the 12 Geo. 2. c. 29.

prisoners, to be by their order kept and conveyed to the places appointed for the gaol delivery, in like manner as such prisoners ought to be kept and conveyed in and from the common gaols by the laws of the land. Provided no such place be made use of for the purposes aforesaid against the free will of the owners thereof.

20. By s. 3. the mayor, bailiff, and other head officer, or any other person having the custody of the common gaol within any corporation of this kingdom and dominion of *Wales*, shall, by the advice of the justices within the said corporation, (one to be of the quorum,) in time of infection, have the like authority for removing his and their prisoners into some other place within their jurisdiction, as to them shall seem fit, during the time of infection; and also to raise a stock after the same rates and proportions as hereinbefore allowed for the several counties within this kingdom.

21. By 52 Geo. 3. c. 160. any one justice for the county or division wherein any gaol which is not a county gaol is situated, may order the overseers of the poor of the parish, township, or place wherein any such gaol shall be situated, to relieve any poor person who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseers as aforesaid.

22. By s. 2. the sum to be given for such relief shall not exceed *6d. per diem*, during the time of his or her confinement in such gaol under mesne process for debt.

23. By s. 3. the overseers of any such parish, &c. to whom any such application for relief shall be made as aforesaid, if they shall doubt whether such poor person be legally settled in such parish, &c. shall cause him or her to be examined upon oath before one or more justice or justices of the peace, touching his or her last legal settlement, upon which examination it shall be lawful for justices to make an order for the removal of such poor person to the place of his last legal settlement, and to suspend the execution of such order of removal during the time of such person being confined in such gaol under such mesne process, which suspension of the same shall be indorsed on the said order, and signed by such justices, and the subsequent permission to execute the same shall be also indorsed on the said order, and signed by such justices, or by any other two justices acting for the same county or division.

24. By s. 4. a copy of the order of removal, and of the order for suspending the execution of the same as aforesaid, shall, as soon as may be after the making thereof respectively, be served upon the overseers of the parish, &c. in which such poor person shall by such order of removal be adjudged to be legally settled.

25. By s. 5. although such poor person shall not have been actually removed in pursuance of such order of removal as aforesaid, any justice may direct the overseers of the parish, &c. in which such pauper is adjudged to be settled, to repay to the overseers of the parish, &c. wherein such gaol shall be situated, all the charges proved upon oath of any such overseers of the parish, &c. where the gaol is situated, to have been incurred in granting relief to such pauper during the time of his confinement, and the suspension of such order, not exceeding *6d. per diem*; and if the overseers of the parish, &c. to which such order of removal shall be made, or any or either of them, neglect to pay any such sum so advanced as aforesaid within twenty-one days after demand thereof, and

shall not within the same time give notice of appeal as is hereinafter mentioned, one justice, by warrant under his hand and seal, may cause the money so directed to be paid as aforesaid, to be levied by distress and sale of the goods and chattels of the person or persons so neglecting to pay the same, and also such costs attending the same, not exceeding 40s. as such justice shall direct; and if the parish, &c. to which the removal was ordered to be made, be without the jurisdiction of the justice issuing the warrant, then such warrant shall be transmitted to any justice having jurisdiction within such parish, &c. who, upon receipt thereof, shall indorse the same for execution: Provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of 5*l*., the party aggrieved by such order may appeal to the next general quarter sessions for the county, &c. in which such gaol is situated, against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may strike out the sum contained in the said order, and insert the sum which in the judgment of the said court ought to be paid, and in every such case the said court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them*, by such other justice or justices as the said court shall direct.

26. By s. 6. The overseers of the parish, &c. wherein such poor person shall, by such order of removal, be adjudged to be legally settled, may appeal against such order to the next general quarter sessions of the peace for the county, &c. in which such gaol is situated, holden after the service of the copy of such order of removal, in case such copy shall have been served upon such overseers twenty-one days before the holding of such quarter sessions, but in case the same shall not be served twenty-one days before the holding of such next general quarter sessions, then the appeal may be to the next succeeding general quarter sessions for the said county, &c. and upon such appeal the like proceedings may be had as are observed in other cases of appeals against orders of removal of poor persons by any law now in being: provided, that in case such order of removal and suspension be not appealed against in manner aforesaid, or if upon appeal such order be confirmed, such poor person shall be deemed to be legally settled in the parish, &c. in which he shall by such order of removal be adjudged to be legally settled.

27. By s. 7. In case any poor person applying for relief under the provisions of this act, shall, upon his examination as to his last legal settlement, be found not to be legally settled in any parish, &c. within *England and Wales*, one justice may order the overseers of the parish, &c. wherein the gaol is situated, (in which such poor person shall be confined under mesne process for debt) to relieve such poor person with a sum not exceeding sixpence *per diem*, out of the funds in their hands applicable to the relief of the poor, which sum shall be reimbursed to the overseers for the use of such funds, out of the county rate, by the treasurer of the county, &c. in which such parish, &c. shall be situated,

* Or, *semble*.

at the expiration of the confinement of such poor person upon such *memorandum* process as aforesaid.

28. See 53 *Geo* 3. c. 113. as to the relief of poor prisoners confined in the King's Bench, Fleet, and Marshalsea prisons, and the schedule thereto annexed, containing the proportions in which the different counties are to contribute.

29. By this statute any justice of the peace for Surry may order such relief as he may think proper to be given to any prisoner confined in the King's Bench or Marshalsea prisons, and any alderman or justice in London to any prisoner in the Fleet, the sum given to any one prisoner not to exceed 6*d.* *per day*, and no prisoner charged in execution for debt shall be relieved under this act after the first day of the term following the time of his being so charged, nor any prisoner who shall have become supersedeable or entitled to be discharged under any act for the relief of insolvent debtors, nor in any case is relief to be ordered until the prisoner have made oath before a judge of one of the courts of law at Westminster, or of the Marshalsea, or a commissioner appointed by one of the said judges for taking affidavits, that he or she is not worth 10*l.* in all the world, and that he or she cannot subsist without the relief provided by this act, and any prisoner convicted of perjury in taking such oath, is to be punished as for wilful and corrupt perjury.

IV. *Form of the Order and Appeal.*

30. One order of relief of poor prisoners cannot be made on the two statutes of 43 *Eliz.* c. 2. and 19 *Car.* 2. c. 4.; there should be distinct orders on each statute. *Eaton Bridge v. Westerham*, *Salk.* 487. i. 402.

31. An order of relief, beginning "we, two of his Majesty's justices of the peace, &c. whose hands and seals are hereunto set, &c." is good, although it be not said in the order that it was made under hand and seal. *Rex v. Woodsterton*, i. 403.

32. An order of relief must state that the person in whose favour it is made is a poor and impotent person. *Rex v. Hayworth*, *Str.* 10. i. 402.

33. An order of relief needs not aver that the justices who made it lived in the parish, or, that there were no justices living in it; for upon this subject the statute 3 and 4 *Will.* 3. c. 11. s. 11. is only directory. *Rex v. Woodsterton*, i. 403.

34. An order of relief, whether made by the sessions or by one justice, must state that it was made upon oath, that the pauper or some person on his or her behalf has applied to the overseers at some parish meeting for relief; that relief has been refused; and that the overseers have been summoned to show cause why it was not granted. *Rex v. Winship and Grunwell*, i. 404.

35. But it seems that the court, in support of an order of relief, will intend that the oath was made, and that the overseers were summoned, unless the contrary appear; for the words of the 9 Geo. 1. c. 7. in this respect, are only directory to the justices, and do not concern their jurisdiction. *Rex v. Woodsterton*, i. 405. *notis.*

36. An indictment for disobeying an order of relief must directly and pointedly allege the service of the order on the party charged with disobeying it. *Rex v. Moorhouse*, i. 414.

37. No appeal lies against an order of relief; for the justice and the sessions have concurrent jurisdiction. *Rex v. North Shields*, i. 408.

REMOVAL OF THE POOR.

- I. WHO MAY OR MAY NOT BE REMOVED.
 - II. OF THE PLACE TO, OR FROM WHICH THE REMOVAL MAY BE.
 - III. ——— COMPLAINT.
 - IV. ——— EXAMINATION OF THE PAUPER.
 - V. ——— DESCRIPTION OF THE PARTIES REMOVED.
 - VI. ——— ADJUDICATION.
 - VII. ——— DIRECTION OF THE ORDER.
 - VIII. ——— AUTHORITY OF THE JUSTICES TO MAKE OR ALTER THE ORDER.
 - IX. ——— STYLE OF THE JUSTICES.
 - X. — SUSPENDING THE ORDER.
 - XI. — EXECUTING THE ORDER.
 - XII. — THE APPEAL AGAINST, AND ABANDONING THE ORDER.
 - XIII. ——— EFFECT OF AN ORDER NOT APPEALED AGAINST.
 - XIV. ——— CONFIRMED OR QUASHED
- ON APPEAL.
- XV. — RETURNING AFTER REMOVAL.
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I. *Who may or may not be removed.*

1. By 13 and 14 Car. 2. c. 12. s. 1. reciting that poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy; and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers; it is enacted that it shall and may be lawful, upon complaint made by the churchwardens or overseers of any parish, to any justice within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.

2. By 35 Geo. 3. c. 101. s. 1. so much of the last-mentioned act as enables the justices to remove persons likely to become chargeable is repealed, and it is enacted, that from thenceforth no poor person shall be removed from the parish or place where they inhabit, to the place of his or her last legal settlement, until such person shall have become actually

chargeable, in which case the removal may be made as in the case of persons likely to become chargeable before this act.

3. By s. 5. every person convicted of larceny or any other felony, and any person deemed by law a rogue, vagabond, idle or disorderly person, or who shall appear to any two justices of the division where he resides, upon the oath of one witness, to be a person of ill fame, or a reputed thief, and not being able to give a satisfactory account of himself, shall be considered as actually chargeable for the purposes of removal.

4. By s. 6. also every unmarried woman with child.

5. And this although such unmarried woman be residing under certificate. *Rex v. Great Yarmouth*, 8. T. R. 68. ii. 545. See *Rex v. St. Mary, Westport*, 3 T. R. 44. ii. 542., where, in a case decided before the 35 Geo. 3. passed, a contrary doctrine was held.

6. We must observe, however, that all the statutes respecting the removal of the poor contemplate the persons subjected to their operation as in the condition of poverty, the meaning therefore, of the clause declaring that unmarried women with child shall be deemed to be actually chargeable, &c. is, that persons, so situated, shall *prima facie* only be deemed to be chargeable, and it still leaves it open to show that the party is of substance so as not to be within the scope and view of the poor laws. Where, therefore, a single woman, living in service with her master, was removed against the consent both of herself and her master, though adjudged by the order of removal to be with child, and therefore deemed chargeable to the parish in which she was serving, the court of King's Bench quashed the order of sessions, which affirmed the order of removal, it not appearing from the case stated by the sessions, nor from the order of removal, that she was adjudged chargeable, otherwise than as a consequence of law in the interpretation of the act of parliament, by the justices removing and the sessions. *Rex v. Alveley*, 3 E. R. 563. ii. 546.

7. But where a maid-servant was discharged from her service for being with child, it was held that she then might be removed. *Rex v. Brompton*, ii. 317.

8. Generally speaking, it seems that nurse children cannot be removed from their parents, nor servants or apprentices from their masters without consent. *Rex v. Cuckfield*, Burr. S. C. 290. *Wangford v. Brandon*, Carth. 449. *Rex v. Ozleworth*, Burr. S. C. 302. *Rex v. Marlborough*, ii. 299.*

* But see *Nolan*, c. 29. s. 2. in *notis* as to the removal of the master who is unable to maintain a chargeable servant, and the servant with him. If the servant be settled in the parish, it is said that he cannot be removed. *Carth. 478*, 18 Vin. Abr. 459.

Married women.

9. A married woman pregnant with a child, which would be, by law, a bastard, is removeable as an unmarried woman under the stat. 35 Geo. 3. c. 101. s. 6. And the circumstance of a woman being pregnant with a bastard, affords sufficient evidence of chargeability to warrant a removal, unless evidence to the contrary be given, showing that she is a woman of substance, and not likely to become actually chargeable; and the *onus* of this proof lies with the party disputing the order of removal. *Rex v. Tibbenham*, 9 E. R. 388. *Supp.* 41.

10. It seems that foreigners, not having gained any settlement in England, could not formerly have been removed from the place where they happened to be. *Cowred's Case*, Comb. 287, ii. 17.

11. But now by 59 Geo. 3. c. 12. s. 33, two justices, upon complaint of the churchwardens and overseers of any parish, that any person born in Scotland or in Ireland, or in either of the isles of Man, Jersey, and Guernsey, hath become chargeable to such parish by himself or herself, his or her family, may cause such person to be brought before them, and examine such person, and any other witness or witnesses, on oath, touching the place of the birth, or last legal settlement of every such person, and enquire whether he or she, or any of his or her children, hath or have ever gained any settlement in England; and if it be found by the said justices that the said person was born in Scotland, or Ireland, or either of the isles of Man, Jersey, and Guernsey, and hath actually become chargeable to the complaining parish by himself or herself, his or her family, such justices may, by a pass under their hands and seals (according to the forms in 17 Geo. 2. c. 5. *mutatis mutandis*), cause such person, his wife, and such children so chargeable as shall not have gained a settlement in England, to be removed to the place of his or her birth, or last legal settlement, in like manner as by the said act (17 Geo. 2. c. 5.) directed for the removal of rogues and vagabonds to Scotland, Ireland, isles of Man, Jersey, and Guernsey.

12. By s. 34. any justice who shall adjudge any person born in Scotland or Ireland, or isles of Man, Jersey and Guernsey (and not having gained a settlement in England) to be a rogue and vagabond, may, in his discretion, order him to be whipped, or imprisoned before removal, or to be removed without whipping.

13. In a recent case, it was held that a child, eight years old, born in England, (but whose parents were both Irish,) and without any settlement in England, and whose mother, after the death of her first husband, had married a settled inhabitant of a parish in England, was not within the 59 Geo. 3. c. 12., but might be removed, if chargeable, to the place of its birth. The court said, that without considering what might have been the case if the mother had been removeable, at the same time it was clear that she having acquired a settlement by marriage the pauper was to be considered as having no parent alive. *Rex v. Great Clacton*, 3 B. & A. 410.

14. Upon a previous occasion, however, where a woman having a settlement, married a foreigner, it was held that the children should be removed to the place of her settlement, not to the place of birth, the court saying, that if the mother have a settlement, the child is no vagrant. *Tynton v. King's Norton*, ii. 24.

15. Where an Irishman, the husband of an English woman, whose father was certificated, lived with and supported his wife and family in the certificated parish, but gained no settlement, it was held that his wife, although when she and her children were ill of a fever, she had asked relief of the certificated parish, could not be removed from her husband to the certificating parish, where she was settled by birth. The court quashed the order of sessions affirming the order of removal, and expressed their opinion that it was cruel behaviour to have removed them at all. *Rex v. Carleton*, ii. 81.

16. But where an order of justices removing *M. F.*, wife of *P. F.*, a Scotchman, who never gained a settlement in England, and their children to the place of her last legal settlement, stated on the face of it that it was made on the examination of the husband, and with the consent of him and his wife, was held good. *Rex v. Eltham*, 5 E. R. 115. ii. 90.

17. The wife cannot be removed from the husband; and it was held in one instance that in case of a removal without him, it must be shown that there is a separation in fact; since the court will not presume this. *St. Michael's, Bath, v. Nunney*, ii. 80.

18. But afterwards, where upon a complaint that a married woman had intruded herself into a parish, she was removed to what was adjudged to be the settlement of her husband, the court said they would not intend that this was a removal from the husband; it did not appear that he was in the removing parish, and besides, the intrusion complained of was by the wife, and the husband could not be removed when he was not complained of. *Rex v. Ironacton*, ii. 81.

19. See further title *Settlement by Marriage*, and div. VI. of this title.

20. One who is resident on an estate granted to him for lives, in consideration of a fine of 5 guineas and 1s. per annum rent, was held not to be removeable though actually chargeable; "the words of the 13 and 14 Car. 2. never were construed to relate to persons living on their own estates, whether acquired by purchase or otherwise,

or at whatever value; the 9 Geo. 1., however, provides that no person shall be deemed to acquire any settlement in any parish by virtue of any purchase of any estate or interest in such parish whereof the consideration, &c. doth not amount to 50*l.* &c. for any longer or further time than such person shall inhabit in such estate and shall then be liable to be removed," &c. By *Lawrence, J.* *Res v. Martley*, 5 E. R. 40. ii. 501*.

21. And to render the party irremovable, it seems that the residence needs not be on the estate; if it be within the same parish is sufficient. *Res v. Souton*, ii. 515. See also dict. per *Lee, Ch.* *Res v. St. Nyotts*, ii. 514.

22. Where a pauper, having a freehold estate in a parish, in the occupation of a tenant, resided there for the purpose of superintending some repairs, he was considered to be irremovable. Upon this occasion Lord Kenyon, Ch. J. observed that it seemed to him a most extraordinary proposition, that a man might be removed from a parish in which he had property, perhaps to a considerable amount, (but whether more or less was in such case unimportant,) because he had let it out, and that if he afterwards came there again, was liable to be treated as a vagrant; that a man, though not in the actual occupation of his estate, might have many reasons for wishing to live in the neighbourhood of it, and he was entitled to the privilege of superintending it. His lordship relied upon the case of *Res v. Hasfield*†, where a boy, eight years old, tenant in fee of 4*l.* per annum, resident with his grandmother within the parish, but who, by reason of his tender years, could not be taken to be in the actual occupation of the property, was held to be irremovable. *Res v. Houghton le Spring*, 1 E. R. 247. ii. 516.

23. A wife, who, on being left by her husband, resides on his estate for forty days by herself, is irremovable from it, although she do not thereby gain a settlement. *Res v. Aythrop, Rooding*, ii. 465. See also *Berkhampstead v. St. Mary's, Northchurch*, ii. 25.

24. Where a son, having agreed to purchase a piece of land for 65*l.*, applied to his father, who consented to advance 20*l.* left to his wife, on condition that a house should be built on the land by the

* But a person is not irremovable from a mere local privilege or franchise to which he is entitled as a freeman. 2 Nol. 143.

† ii. 462. See also ii. 523. n.

son, which the father and mother were to have for their lives, and the life of the survivor, and afterwards the same was to go to the son, but the father and mother were not to sell or dispose of it, nor to take any other family into the house; (which agreement however was only by parol,) and afterwards the father advanced the 20*l.*, and the son completed the purchase, and the land was conveyed to him in fee, and he built a house, of which the father and mother took possession with his consent, and lived in it for three years without paying any rent, when the father died, and the mother continued in possession. Held that the father did not gain a settlement by the residence on the land, nor was the mother entitled to reside on it irremovably. *Rex v. Inhabitants of Standon*, 2 *M. & S.* 461. *supp.* 227.

25. The family of a man who has an estate from year to year cannot be removed therefrom while his interest continues, although he have gained a subsequent settlement in another parish. *Rex v. Leeds*, *ii.* 468.

26. But where a pauper agreed to commence tenant of premises, of the value of 10*l. per annum*, and upwards, on the 5th of July, and in the June preceding, by permission of the then tenant, put several of his goods upon the premises, and worked there, (the tenant giving up to him the key, and sleeping elsewhere,) it was held that this was no occupation of the premises by the pauper in the relation of tenant, and that he might be removed, having become actually chargeable on 28th June. *Rex v. St. Michael's, Coventry*, 15 *E. R.* 67. *supp.* 125.

27. See further titles "*Settlement by Renting a Tenement, and by Estate.*"

28. A labourer employed by his master to drive his cart into parish with one load, and to return with another, and who broke his leg by accident, which detained him for some time in each parish, by which he was relieved, is to be considered as casual poor, and, as such, not removeable either under 13 and 14 *Car. 2. c. 2.* or 35 *Geo. 3. c. 101.* *Rex v. St. James's, in Bury St. Edmunds*, 10 *E. R.* 25.

29. Where a pauper renting a house in *I.*, (receiving occasional relief,) was sent backwards and forwards to the adjoining parish, having no settlement in either, and at last taken by the parish officers of *I.* into *F.*, where she was relieved and threatened to be sent to prison if she returned into *I.*, the court held that her residence under such circumstances in *F.*, did not render her irremovably as

casual poor, but that she might well be removed to *B.*, her proper parish. *Rex v. Birmingham*, 14 *E. R.* 251. *supp.* 49.

30. By 8 and 9 *Will.* 3. c. 11. no person living in one parish under certificate from another parish, shall be removed until actually chargeable.

31. A certificated person who receives relief during illness from a parishioner, does not thereby become chargeable to the parish, although the parish officers reimburse the parishioner: and though although relief were asked from the parish officer; which, however, did not appear to have been afforded. *Rex v. Kingswood*, ii. 538.

32. Those members alone of a certificated family can be removed who have become actually chargeable. Where a grandfather lived under a certificate, and his son, living apart from him, had received relief from the certifying parish, but since died, leaving a child, who, together with his mother, had likewise so received relief and with the knowledge of the grandfather, still it was held that the grandfather could not be removed until *actually* chargeable, it not being sufficient that he was *virtually* chargeable by not having saved the parish the burthen of relieving his son and grandson. *Rex v. St. Mary, Westport*, 3 *T. R.* 44. ii. 542. and see *Rex v. Framlingham*, ii. 539.

33. The poor belonging to one parish, being under certificate in a workhouse situate in another parish, are not removeable therefrom as persons chargeable, because they are unable to work. *Rex v. St. Peter's and St. Paul, in Bath*, ii. 540.

34. By 13 *Geo.* 3. c. 84. s. 56. no gate-keeper of any turnpike-road or person renting the tolls thereof, and residing in any toll-house belonging to the trustees, shall be removed until actually chargeable.

35. *As to soldiers and sailors exercising trades, and during such time being irremovable, see title Militia and Soldiers, Art. 54. &c.**

II. Of the Place to or from which a Removal may be.

36. The removal cannot be to or from an extra-parochial place. *Bridewell v. Clerkenwell*, *Salk.* 486. ii. 633. *Forest of Dean v. Linton*, *Salk.* 487. ii. 630.

37. Nor to a hamlet within a parish, unless it be a township or vill. *Rex v. Tamworth*, ii. 633.

38. Nor to a large district, part of a parish and not maintaining its poor separately. *Rex v. Swadcliffe*, ii. 633. 690.

* For removal of debtors, see title Relief, Art. 24. et seq.

39. If a parish lie within two counties, and an overseer be appointed by the justices of one of the counties, any two justices may move a pauper into that part of the parish for which no overseer particularly appointed; for as to this purpose, the person chosen the one county is the officer of the whole parish. *Rex v. Mersell*, ii. 632*.

40. A pauper being a settled inhabitant of *A.* subsequently acquired a settlement in *B.* The latter township afterwards ceased to act as a place capable of maintaining its own poor: Held, notwithstanding, that the previous settlement in *A.* having been extinguished, the pauper could not be removed thither from a third town as to the place of his last legal settlement. *Rex v. Saughton on the Hill*, 2 *B. & A.* 162.

41. Where an order has been abandoned by consent, the justices may make a fresh order, removing the pauper to a third parish. *Rex v. Diddlebury*, 12 *E. R. supp.* 108.

III. Of the Complaint.

42. An order of removal must state that it was made upon complaint; that gives the justices authority to remove; and is, therefore not matter of form only, but of substance. *Rex v. Hareley*, *ad.* 361. ii. 641.

43. And therefore the sessions cannot amend this defect under the *Geo. 2. c. 19.* *Great Bedwin v. Wilcot*, *Str.* 1158. ii. 641.

44. The order must not only state that it was made on complaint, but that it was made on the complaint of the parish officers. *Weston Rivers v. St. Peter's*, *Salk.* 492. ii. 639.

45. But where the order was directed to the overseers, &c. and then stated "Whereas complaint has been made by you, &c." this was held sufficient. *Rex v. Kidderminster*, ii. 369.

46. An order of removal made on the complaint of the churchwardens and overseers of the borough of, &c. seems good; for, though a borough may consist of several parishes, and so it be uncertain, to which parish the order relates, yet that shall not be intended. *Macclesfield v. Leithfrith*, ii. 638.

47. An order directed to the parish officers of two parishes, stating that "whereas complaint has been made by you unto us, &c." without stating which of the two parishes made the complaint, is

* But if a parish have several divisions, each having distinct rates and officers, a removal may be made to any of them in which the pauper is settled. *Anon. Sir Th. Raym.* 476.

to their settlements, see title *Evidence* divs. VI, V.; and as to the Declaration &c. of Paupers div. III.

V. *Description of the Parties.*

71. An order of removal must state the name of the pauper removed, or describe him as a person whose name is unknown. *Southwell v. Needwell*, ii. 667. ii. 607.

72. An order to remove a man and his family is bad as to the family, being too general. *Beaton v. Siston*, Str. 114. *Rex v. Johnson*, ii. 658. Salk. 485.

73. Every order that concerns the removal of a father and his children ought to show the ages of the children, for they may have gained a settlement in some other right. Seven years is an age at which the court would presume that a child might gain a settlement; and if it appear from the order that the child is above seven years old, the order must set forth that he has not gained a settlement in his own right. *Rex v. Trinity, Chester*. ii. 667. *Rex v. Middleton*, ii. 660. But see *Rex v. Levington, Burr. S. C.* 276. where the court would not suppose that a child of eight years old could have gained a settlement itself.

74. It is only necessary, however, to set out the ages of the children, when the place to which they are removed is the parent's settlement; this needs not be done when they are removed to their own legal settlements. *Rex v. Heptonstall*, ii. 667. *Ringmore v. Petworth*, 2 Nol. 197.

75. But in the latter case there must be an express adjudication that the place to which they are removed is their last legal settlement. *Rex v. Uffculme*, ii. 668.

76. The justices can only remove those persons of whom the parish complains as likely to become chargeable. Thus an order, stating, "Whereas J. S. has intruded into the parish of A., and is likely to become chargeable," these are to remove him *with three children*, was quashed. *Rex v. Newington*, ii. 640.

77. But where two justices adjudged the settlement of the pauper to be at K., and that he was likely to become chargeable to H. and sent him, his wife, and infant child, to K., the order was held good. *Hobey v. Kingsbury*, Str. 527. ii. 662.

VI. *Of the Adjudication.*

78. The justices must expressly adjudge that the place to which the pauper is ordered to be removed is the place of his last legal settlement. *Bury v. Arundel*, Salk. 479. ii. 658.

9. Therefore, where a son was removed to the parish of Middleham, on an adjudication that Middleham was the last legal settlement of the father, the order was quashed; for the settlement of a son is not by unavoidable consequence the settlement of his son. *Rex v. Middleham, Fol. 271. ii. 660.*

10. And so where an order adjudged that a man was settled at A. and therefore removed his widow there, for she might have had a settlement subsequently. *Egburn v. Hartly Wintly, ii. 661.*

11. So where the justices ordered the pauper to be removed to the place of his last legal settlement; for this is no adjudication that A. is so. *Rex v. Westwood, Str. 73. ii. 661.*

12. An order of removal to remove a wife, "and whereas, on a finding made by the said E. F., it appears that her husband was last legally settled at H., these therefore, &c." is bad; for there is no adjudication that the husband was last legally settled at H. but only the oath of the woman. *Rex v. Hackney, Salk. 478. ii. 658.*

13. So an order reciting "Whereas B. is; as we are credibly informed, the place of his last legal settlement," was quashed; for it ought to have been distinctly averred that B. was the place of the pauper's last legal settlement. *Trowbridge v. Weston, Salk. 473. ii. 658.*

14. The words "legal settlement," and "last legal settlement," mean the same thing; because by every new settlement the preceding settlement is discharged, *ii. 658 notis.*

15. An order, "and we do also adjudge that the last legal settlement of the said A. B. is at C. in the county of D.," leaving out the word settlement, is bad. *Rex v. Warnhill, ii. 662.*

16. An order stating that the pauper is settled at such parish according to our knowledge, is bad. *Rex v. St. Mary Ottery, 61.*

17. An order of removal stating that "on examination we do find the same to be true," without making an adjudication, is bad. *Stallingburgh v. Hazhay, ii. 661.*

18. An order of justices removing nurse children to their derivative settlements; without noticing the death of the parents, or designating the place to which they are removed to be the settlement of their parents, was confirmed. *Rex v. Bucklebury, 1 T. R. ii. 664.*

19. So an order removing a wife to her maiden settlement, without stating that her husband was dead, or that he could not be

found, or that he had not gained a settlement, was held good. *Rex v. Ryton, Cald.* 39. ii. 664.

90. And on the removal of the wife to "her last legal settlement," the court will intend in support of the order that it is the settlement of her husband. *Rex v. Higher Walton, Burr. S. C.* 132.*

91. In a very recent case, an order for the removal of a married woman (not stating her to be such) and her children to Y, adjudging the lawful settlement of her and her children to be in Y, was held well, without adjudging Y. to be her husband's settlement. *Rex v. Yspitty, 4 M. & S.* 52. *Supp.* 251. But see *Appole v. Dunswell*, ii. 76.

92. On the removal of a widow, it is enough in the first instance to prove her maiden settlement. *Rex v. Woodford, Cald.* 236. ii. 86., and see *Rex v. Hensingham*, ii. 85.

93. Where an order ran, "Whereas J. Charlwood and his wife is come into your parish endeavouring to settle themselves contrary to law, and are likely to become chargeable, these are therefore to require you to convey the said Charlwood and his wife from your said parish to the parish of A.," &c., the court held that the apparent uncertainty whether the husband and wife both came into the parish from the word *is* in the singular number would not vitiate the order. They said that the place of the last legal settlement, and the liability of the party to become chargeable, must be positively adjudged, but as to the complaint, it was well enough to take it by implication. *Rex v. South Marston*, ii. 640.

94. An order stating that the pauper *may* become chargeable, is bad. *Teilby v. Willerton*, ii. 662.

95. In one instance, where the adjudication was only that the woman was with child, and did not state expressly that she was chargeable, the court held the order to be insufficient. *Rex v. Holm East Waver Quarter*, 11 *E. R.* 381. *supp.* 44.

96. But it was held well enough to state that the pauper (a single woman) was by being pregnant, deemed to have become chargeable. *Rex v. Diddlebury*, 9 *E. R.* 398. *supp.* 44.

97. And in another case of a married woman pregnant with a bastard, it was held sufficient to state that the pauper was actually

* See *Rex v. Hedsor, Cald.* 371. ii. 86., also *Rex v. Hinworth, Cald.* 42. ii. 83. *Rex v. Leigh, Doug.* 45. ii. 85. *Rex v. Higher Walton, B. S. C.* 132. ii. 81.

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chargeable without setting forth in what manner chargeable. *Rex v. Tibbenham*, 9 E. R. 388. *supp.* 41.

98. Have become chargeable, imports are become chargeable. *Rex v. Honiton*, ii. 663.

99. So also removing A. who is chargeable, &c. is a sufficient judication. *Rex v. Rockvil*, ii. 661.

100. It must be expressly adjudged that the pauper is chargeable the parish removing him.* *Uffcalm v. Clisthydon*, ii. 662. *acc. ex v. Bradford*, 2 Nol. 200. *Rex v. Netherton*, B. S. C. 139. *id. vide contra*, *Rex v. Witham*, *Rex v. Leofield*, and *Maidstone v. Uthing*, Str. 142, 393, 698.

101. Where a certificated person is removed, the order needs not state the allowance of the certificate. *Rex v. Newton*, ii. 660.

VII. Of the Direction of the Order.

102. An order of removal must be directed to the officers of the parish from which the paupers are removed. *St. George's v. St. Luke's*, Salk. 493. ii. 665.

103. And if it be directed to the officers of both parishes, the omission of the wrong parish is only surplusage. *Spalding v. St. John Baptist*, Fo. 267. ii. 639.

104. But if the overseers of A. be to remove, and the overseers of B. be to receive the pauper, and the order be directed to the overseers of the parishes of A. and B." ordering them both to remove and receive the pauper, it is bad. *Bedwick's case*, 665. See also *Binfield v. Banstead*, ii. 666.

105. If an order be directed to the constable only, he may refuse to obey it; but if he remove the pauper under it, the removal is good. *Rex v. Wangford*, ii. 665.

106. An order directed to the parish officers of different counties, the justices styling themselves "of the county aforesaid," no county being named in the margin, is bad. *Rex v. Stepney*, 666.

107. But where "The borough of Leeds" stood in the margin of an order of removal, and the direction was, "To the churchwardens and overseers of the township of Holbeck in the said

* In one case, "have intruded into your town, and are likely to become chargeable there," was held sufficient. *Rex v. Eaking, Burr.* C. 320.

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borough," it was held good; for the margin is to be considered as a part of the order. *Rex v. Holbrook, 12 L. R. 466.*

108. And an order of removal, directed to the parish officers "of the parish, township, or division of A," seems good. *Rex v. Uleerstone, 7 T. R. 565. ii. 666.*

109. An order of removal directed to "the parish of Poole or town and county of Poole," is sufficient, although the proper name of the parish be St. James in Poole; there being no other parish in the town and county of Poole. *Rex v. Topham, 7 E. R. 426. i. 72.*

VIII. Of the Authority of the Justices to make or alter the Order.

110. The justices must remove a pauper to the place of his last legal settlement; for they cannot order the parish officers of such place to relieve him in the parish where he resides. *Clypton v. Ravistock, ii. 631.*

111. The justices cannot make an order of removal "to continue till the next session." *Braiter v. Udey, ii. 631.*

112. A single justice may receive the complaint of the pauper, but two justices must make the order of removal. *Rex v. Redwood, Str. 73. ii. 631.*

113. With respect to signing the order, &c. see this title, *De. P.*

114. An alteration made in an order of removal by one justice in the presence of the other, does not vitiate the order; as when an alteration was made by one of the magistrates immediately after the order was signed by both, but in the presence of the other, and before it was delivered to the parish officers to be executed, although it were not re-sealed and re-delivered by the justices after the alteration; for, by Lord Kenyon, such an alteration would not vitiate a much more serious instrument than this; a warrant by which the life of a person is to be decided. *Rex v. Llanurish, 4 T. R. 472. ii. 634.*

115. The two justices cannot remove more than one family by the same order. *Cheuton v. Compton Martin, Str. 471. ii. 634.*

116. If the two justices grant an order improvidently, they may grant a supersedeas. *Rex v. Rumbold, Str. 6. ii. 631.*

117. See title *Sessions and Justices next*.

IX. Of the Style of the Justices.

118. The justices must be styled in the order "justices of the peace." *Rex v. Upton, ii. 637.*

And they must be styled justices of the peace "of or for *by*;" since an order stating them to be justices of the peace county only, is bad. *Rex v. Owlton*, *Salk.* 474. ii. 637.

Where an order was directed to the officers of two different, and the justices were stated to be "for the county aforesaid" was held to be bad. *Rex v. Stepney*, ii. 638.

And an order directed to the overseers of Bedworth in the of Warwick and to the overseers of Sow in the county and Coventry, stating that complaint had been made by the s of Bedworth, "to us, &c. two of his Majesty's justices county aforesaid," was held a nullity: because it did not y appear for which of the two counties they were appointed *Rex v. Chilvers Coton*, 8 *T. R.* 178. ii. 635.

Where an order, "Wilts, to wit," was directed to the s of Donhead, in the county of Wilts, and to the over-Moor-Critchell, in the county of Dorset, stating that complaint had been made "by the overseers of Donhead, in the county s, to us, &c. two justices of the *said county*," it was held a for there being two counties mentioned before, it ought to n expressly stated for which of the counties they were *Rex v. Moor-Critchell*, 2 *E. R.* 66. ii. 635.

But, more recently, where an order ran, "county of Rutland, the (parish officers) of *W.* in the said county, and to the officers) of *M.* in the county of Leicester; Rutland, *to wit*, e complaint, &c. of the (parish officers) of *W.* in the said to us, &c. being justices in and for the *said county*, &c." it held that it thereby sufficiently appeared that they were for the county of Rutland. *Rex v. St. Mary's, Leicester*, l. 327. *supp.* 251.

An order of removal stating the justices to be justices peace in and for the county by the common appellation of ity, as "of Shropshire" instead of "of Salop," was held to ient. *Rex v. Madeley*, ii. 638.

And where two justices, in an order removing Ann Day from r in the county of Southampton to Lambourn in the county s, stated themselves to be "two of his Majesty's justices peace for the borough or town and parish of Andover, &c." eld good. *Rex v. Andover*, ii. 638.

X. Of Suspending the Order.

By 35 *Geo.* 3. c. 101. s. 2. in case any poor person be brought ny justice, for the purpose of being removed from the place

where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it appear to the said justice, that such *poor person is unable to travel*, by reason of *sickness or other infirmity*, or that it would be dangerous so to do, such *justice may suspend the execution of the order*, until satisfied that it may safely be executed, without danger to any person who is the subject thereof; which suspension of, and subsequent permission to execute the same, shall be respectively indorsed on the said order of removal or vagrant pass, and signed by such justice. And no act done by any such poor person continuing to reside in any parish, township, or place, under the suspension of any such order shall be effectual, either in the whole or in part, for the purpose of giving him or her a *settlement* in the same; and the charges proved upon oath to have been incurred by such suspension of any order of removal may, by the said justice, be directed to be paid by the churchwardens and overseers of the parish or place in which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order; and if the churchwardens or overseers of the parish or place, to which the order of removal shall be made or any or either of them, shall, upon the removal or death of such poor person ordered to be removed, *refuse to pay* the said charges within three days after demand, and shall not within the same time give notice of appeal as is hereinafter mentioned, one justice may by warrant under his hand and seal, cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person so refusing, and also such costs, not exceeding 40s. as such justice shall direct; and if the parish or place, to which the removal of such poor person is made or was ordered to be made, before the death of such person, be *without the jurisdiction* of the justice issuing the warrant, then such warrant shall be transmitted to any justice having jurisdiction within such parish or place, who upon receipt thereof, may indorse the same for execution: provided that if the sum so ordered to be paid on account of such costs and charges exceed the sum of 20*l.*, the party aggrieved may appeal to the next general quarter sessions, as against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded is more than of right ought to have been directed to be paid, such court may strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid, and in every such case the said court shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or in case of death by such other justice or justices as the said court shall direct: Provided, that nothing in this act contained shall extend to alter or abridge the power of justices to pass or punish vagrants according to 17 Geo. 2. c. 5. (except so far as regards the power of suspending the vagrant pass, in the manner and for the causes before mentioned.)

127. That part of the last mentioned statute which relates to the backing of the warrant by the magistrate of another jurisdiction, is peremptory, and such magistrate must indorse the warrant; he acts only ministerially in this case, and is not answerable for its legality, which remains at the hazard of him who first granted it. *Rex v. Kynaston*, 1 E. R. 117. ii. 680.

3. An order of suspension under this statute may be made, though the pauper be not actually brought before the justices at the time of making such order.

I hope we shall do no violence to the words, and I am sure we shall not violate the spirit of the act, by construing the words, 'in case any poor person shall henceforth be brought before any justice or justices of the peace, &c.' to mean, in case a decision concerning the removal of any poor person, or, if the order of any poor person shall be brought before the justices of the peace for the purpose of his removal, &c." *By Lord Ellenborough, in Rex v. Everdon, 9 E. R. 101. sup. 111.*

1. By 49 Geo. 3. c. 124. in all cases wherever the execution of any order of removal or of any vagrant-pass shall be hereafter suspended by any justice of the peace of the 35 Geo. 3. c. 101. any other justice of the county or other justice within which such removal or pass shall be made, may direct the same shall be executed, and the charges to be incurred as aforesaid to be paid, and carry into execution any such amended orders as aforesaid as fully as the said respective powers can be executed by the said justice who shall make any such order of removal, or by the justice who shall grant any such pass as aforesaid.

2. By s. 2. when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of making such order, and not from the time of making such removal under the virtue of the same.

3. By s. 3. in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with or related to each other, and who are living together as one family at the time of any order of removal made, or vagrant-pass granted, during the dangerous sickness or infirmity of any one or more of such family, on whose account the execution of such order of removal or vagrant-pass is suspended; it is enacted, that where any order of removal or vagrant-pass shall be suspended by virtue of this or of the 35 Geo. 3. c. 101. on account of the dangerous sickness or other infirmity of any person thereby directed to be removed or passed, the execution of such order of removal or vagrant-pass shall also be suspended for the same period, with respect to every person named therein, who was actually of the same household, or of such sick or infirm person at the time of such order made or vagrant-pass granted.

4. Where husband and wife, with their children, were removed from their settlement, and the order was suspended as to the husband, it should appear that he was sufficiently recovered to be able to travel, and the wife and children were removed, after his death, that any subsequent order removing the suspension of the first order, the court of King's Bench held that the want of such subsequent order afforded no reason for the sessions quashing the order, *as against the parish to which the wife and children were removed,*

nor for quashing another order for payment of the charges incurred by the suspension of such order which had been made, and they quashed the order of sessions which had quashed the two orders of justices. *Rex v. Englefield*, 13 E. R. 317. *supp.* 112.

133. See *Rex v. Bradford*, *ante* title *Appeal*. *div.* IX. *Art.* 2.

XI. *Of executing the Order.*

134. By 3 W. 3. c. 11. s. 10. if any person be removed by virtue of this act from one county, riding, city, town corporate, or liberty, to another, by warrant under the hands and seals of two justices, the churchwardens or overseers of the poor of the said parish or town, to which the said person shall be so removed, shall receive the said person, and, on refusal, (upon proof thereof by two witnesses upon oath before any justice of the county, &c. to which the said person shall be so removed) shall forfeit for each offence the sum of 5*l.* to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any justice of the county, &c. to which such person was removed, to the constable of the parish or town where such offender dwells, which warrant the said justice is hereby impowered and required to make, the overplus to be returned to the owner; and for want of such sufficient distress, then the said justice shall commit the said offender to the common gaol of the said county, &c. for the space of forty days: provided that all such persons aggrieved may appeal to the next general quarter sessions for the county, &c. from which the said person was so removed.

135. A refusal to receive a pauper, removed by an order of justices, is an indictable offence. *Rex v. Davis*, i. 338.

136. By 54 Geo. 3. c. 170. s. 10. the churchwardens, overseers, or others having the management of the poor of any district, parish, township, or hamlet, may employ any proper person to remove any pauper ordered to be removed by any justices competent to make such order; and a delivery by such person of any pauper shall be as valid as if delivered by any churchwarden or overseer.

137. The order should be delivered, with the pauper, to the parish officers appointed to receive them; and if there be only one original, this should be shown, and a copy delivered. It seems also enough to produce the justices' warrant to convey the pauper, inasmuch as the magistrates may retain the original order. See *Nol. c.* 29. s. 4. and authorities there cited.

138. The duplicate original order should be delivered to and retained by the clerk of the peace as a record of the settlement where the receiving parish neglects to appeal. *Ibid.*

XII. *Of the Appeal against and abandoning the Order.*

139. For appeal, see title *Appeal*, *Div.* 8.

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140. The parish in whose favour an order of removal is made, may abandon it, if they choose to do so, without waiting for the opposite party to appeal. *Rex v. Diddlebury*, 12 *E. R.* 359. *supp.* 108.

141. And after an order has been so abandoned and cancelled by the justices, with the consent of both parishes, a second order may be made by the same justices removing the pauper to a third parish. *Ibid.*

142. An order of removal may be abandoned by the parish in whose favour it is made, by their consenting to take the pauper back again, &c. *Rex v. Llanrhydd*, ii. 686.

143. Where the justices have not jurisdiction, the order itself is nullity, and may be objected to at any period of time, though unappealed against when made. *Rex v. Chilvers Coton*, ii. 635.

144. So, also, if the removal were to a place not maintaining its own poor. *Rex v. Swatcliffe*, ii. 690.

XIII. *Of the effect of an Order not appealed against.*

145. An order of removal, if unappealed against, becomes final and conclusive as to the settlement of the pauper at the time of the order, and of the facts stated in it. *Rex v. Hinsworth, Cald.* 2. ii. 689. *Malendine v. Hinesden*, *Fol.* 273. *Rex v. Leverington*, 715. *Rex v. Northfeatherston*, 1 *Sess. Ca.* 154.

146. And this, too, as between third parishes not parties to the order: thus, where the pauper was born at *G.*, and had acquired settlement in *C.*, and was removed from *B.* to *G.*, against which order there was no appeal by *G.*, and, subsequent to such removal, the pauper had done no act to gain another settlement, the sessions affirmed an order removing the pauper from *D.* to *C.*; but the court said, that the former order of removal to *G.*, which was submitted to, was the most authentic proof of his settlement being there at the time of the order made, and said that they would inquire every thing in support of that settlement so adjudged. And the court further observed, that the fact stated by the sessions of prior settlement in *C.* was immaterial. *Rex v. Coraham*, 11 *E. R.* 388. *supp.* 113.

147. But it seems that it should distinctly appear that the pauper has not gained a subsequent settlement; for where a removal of a pauper took place from *B.* to *C.*, and *C.* neglected to appeal, and four years afterwards another order was made, removing the pauper

from a third parish to C., the court said that they could not tell, but that it might have appeared to the justices that he had gained a new settlement; and, although affidavits were offered to prove that no new settlement had been substantiated before the sessions, the court held that they could not examine into that fact by affidavit, nor enquire thereby into the reason for making the order, and they confirmed the order of sessions quashing the order of removal. *Markham v. Findon, Salk. 489. ii. 700.*

148. The removal is conclusive as relates to the fact of marriage, and as relates to after-born children. *Rex v. Woodchester, ii. 685. Str. 1172.*

149. Thus, an order removing J. S. and F. his wife, adjudging that they were last legally settled in M. is conclusive upon the parish of M. as to the marriage and settlement of the husband and wife; so that upon a subsequent removal of the wife, describing her as F. S., single woman, from M. to B., the parish of M. cannot shew in evidence that the marriage was null and void. *Rex v. Binegar, 7 E. R. 377. i. 719. See also Rex v. Silchester, ii. 686. Rex v. St. Mary, Lambeth, ii. 695.*

150. It seems to have been admitted that an order removing a wife is, unappealed from, as conclusive as to the husband's settlement as if he had been removed with her; and this, although the husband be not in fact settled in the parish to which his wife is removed. *Rex v. Towcester, ii. 691. See also dict. Grose, J. Rex v. Rugely ii. 697.*

151. An order unappealed from, being conclusive that the place to which the pauper is removed, is the place of his last legal settlement, a new settlement can only be gained by some act altogether subsequent to his removal. *Rex v. Kenilworth, ii. 692. 2 T. R. 598.*

152. But an order of removal is only conclusive to those who are mentioned in it; so that if only the father and mother be removed thereby, the question relative to the settlement of their children is still open. *Rex v. Southowram, 1 T. R. 523. ii. 691.*

153. It is conclusive, however, as to all derivative settlements from the persons removed. *Rex v. St. Mary, Lambeth, 6 T. R. 615. ii. 695. See also Rex v. Woodchester, ii. 685.*

154. An order removing a certificated person from a third parish to the parish to which he was certified, is conclusive, if unappealed from, against that parish on a subsequent removal from thence to the certifying parish. *Rex v. Ealing, ii. 690.*

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155. Where a fême covert was removed by an order of two justices from *A.* to *B.*, describing her as "widow," and there was no appeal against it, the court held it to be conclusive, not only as to her settlement, but as to that of her husband also; since, it was said, the mere circumstance of the party being wrongly described, could not take the case out of the general rule. *Rex v. Rugeley*, 8 *T. R.* 620. ii. 697.

156. But to render an order conclusive for want of appeal, even to the parties mentioned in it, it must be a subsisting order; for if the order be deserted, it is not binding though unappealed from. *Rex v. Llanrhydd*, ii. 686.

157. So, also, it must be a legal order, or the neglecting to appeal against it will not render it conclusive. *Rex v. Swalcliffe*, ii. 690.

158. Therefore, where a person rented and resided upon a tenement of more than ten pounds a year in the parish of *A.*, but was removed by an order of two justices to the parish of *B.*, it was held that this order was not conclusive, though unappealed from. *Rex v. Fillongley*, 2 *T. R.* 709. ii. 693.

159. An order of removal, though unappealed from, is not conclusive, if it do not distinctly appear upon the face of it that the justices had jurisdiction. *Rex v. Chilvers Coton*, ii. 695.

XIV. Of the Effect of an Order confirmed or quashed on Appeal.

160. On an order of removal being reversed, two justices within whose jurisdiction the appellant parish lies, may remove the pauper back to the parish from whence he was sent. *Honiton v. South Beerton*, *Comb.* 401. ii. 700.

161. Where, on appeal, the order is discharged by the sessions, that judgment binds only the parties; but when, on appeal, the order is confirmed, that is conclusive as to all persons as well as to the parties, being an adjudication of the place of the pauper's last legal settlement. *Mynton v. Stoney Stratford*, *Salk.* 527. *Little Bitham v. Somesby*, *Str.* 232.

162. Thus, if an order be confirmed, the parish, *A.*, where the settlement is adjudged, cannot remove the pauper to *B.*, a third parish, "to a settlement gained previously to the confirmation of the order;" the adjudication is final as to all persons and places, until a new settlement be gained. *Harrow v. Rislip*, *Salk.* 524. ii. 700.

163. But if an order of removal be reversed on appeal, and the pauper return to the respondent parish, they may remove him

from thence to a third parish. *St. Michael's Bedingham v. Kingston Bowsey*, ii. 702. *notis*.

164. And where an order of removal has been reversed, the pauper may be removed from a third parish to the appellant parish. "We are all satisfied that an order of reversal is conclusive only on the parishes concerned, and not on all other parishes," by *Lord Hardwicke*. And *Lee, Justice*, said that the proper report of the case of *Kingston Bowsey* was in *Carthew*, and that an order of discharge was only final between the two contending parishes. *Cirencester v. Coln, St. Aldwins*, ii. 702.

165. A pauper was removed from *A.* to *B.*, and, on appeal, the order was discharged: yet it was held that the parish of *A.* might remove the pauper to *B.*, if he afterwards gained a settlement in that parish; but the court said that the fact of his having done so must be specially stated, since they would not make any intention or presumption in favour of such settlement. *Rex v. Bradenham*, ii. 704. See also *Foston v. Carleton, Str.* 567. *Alderton v. Fekingtowe*, ii. 701.

166. In a subsequent case the court expressly recognized a distinction mentioned in the case last cited, that an order confirmed on the merits on appeal, concludes the appellant against all the world, but that where the order is reversed, the two contending parties only are stopped by the determination; a third parish therefore may remove to, and show a settlement in the appellant parish, gained subsequent to that in question when the order was discharged, though prior to the sessions at which such discharge took place. *Rex v. Bentley*, ii. 704. See also *Rex v. Leigh*, ii. 706.

167. And with respect to the rule, that an order confirmed is final to all the world, and an order discharged between the two parishes, this must be understood as applying to cases where the circumstances remain the same: for where a certificate-man was removed as *likely to become chargeable*, which order was, upon appeal, discharged, and afterwards removed to the same parish as *actually chargeable*, which last order was confirmed, the court held that the two orders of sessions were consistent with each other, and that the pauper had been properly removed. *Rex v. Osgathorpe*, ii. 703.

168. An order of removal quashed for informality is not conclusive between the contending parishes. *Rex v. Bishopswalton, Fol.* 275. ii. 701

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169. And therefore where the sessions quashed an order removing the pauper from *A.* to *B.*, for want of a proper adjudication of the last legal settlement of the pauper, it was held not to be conclusive. *Rex v. St. Andrew's, Holborn*, 6 *T. R.* 613. *ii.* 706.

170. Yet where an order was good with respect to the settlement of the person removed, but reversed for a defect in form, it was, in a previous case, said to be final as to the settlement, and a bar to all subsequent orders. *Mungerhunger v. Warden*, *ii.* 702.*

171. In a case where an appeal was allowed, because the respondents did not produce the order, who were directed to pay costs, two justices subsequently removed the pauper to the appellant parish; Lord Hardwicke, Ch. J. seemed to be of opinion that this might be done, saying that the order of sessions which allowed the appeal was only a declaration by them that the appeal was proper, that the costs were given because the respondents did not produce the order, but that there was no judgment one way or the other as to the pauper's settlement. *Rex v. Sarratt*, *ii.* 702.

172. As to the cases where the order itself is a nullity, *vide ante Div. XIII.* of this title *Arts.* 158. *et seq.*

XV. Of returning after Removal.

173. By 13 & 14 *Car.* 2. *c.* 12. *s.* 3. if such person or persons (ordered to be removed) shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, any justice of the city, county, or town corporate, where the said offence shall be committed, may send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse, in this present act hereafter mentioned, there to be employed in work or labour.

174. By 17 *Geo.* 2. *c.* 5. *s.* 1. all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any justice may commit such offenders, (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one month.

175. It seems that a regular complaint upon oath should be made, and the pauper summoned before any committal takes place, for where a pauper confessed himself settled in the parish of *A.*, and after having been removed, then returned to the parish from whence he had been removed under a colourable pretence,

* Where an order is quashed for defect of form, there should be a special entry, which will prevent all difficulty.

and was, for such return after removal, committed by a justice at the petty sessions for three days, without any summons, or oath made of his return, the court said that the proceeding was very irregular, and were inclined to grant an information against the committing magistrate, but no corrupt motives appearing on the part of the justice, they allowed the prosecutor to accept of some proposals to make him amends. *Rex v. Angell*, ii. 681.

176. Where an original order by two justices was quashed at the sessions, but, upon being removed by certiorari, confirmed by the court of King's Bench, the pauper may be committed if he return into the parish from which he was removed by such original order. *Rex v. Hall*, 5 *Mod.* 163. ii. 681.

177. The warrant of commitment of a pauper for returning after removal, must be either on the 13 and 14 *Car. 2. c. 12.* or the 17 *Geo. 2. c. 5.* and upon whichever statute it be founded, must pursue the words of the act: thus where a warrant issued for committing a man to the house of correction, "there to remain until discharged by due course of law," the court held that it was bad, since the words of the latter statute are, "there to be kept to hard labour for any time not exceeding one month," and of the former, "to the house of correction, there to be punished as a vagabond," or, "to a public workhouse, there to be employed in work and labour." *Baldwin v. Blackmore*, *Burr.* 595. ii. 682.

178. A conviction on either of the above statutes must state the parish to which the pauper returned. *Rex v. Elere Cole*, ii. 685.

179. An order of removal only prevents the person returning in a state of vagrancy. Thus where the pauper was removed from the parish of *A.* to *B.*, and on the very same day returned from *B.* to *A.*, to a tenement in *A.*, (without making any new contract) which he had before rented and resided in for some years, the court were of opinion that he had a right to return. *Rex v. Fillongley*, 2 *T. R.* 709. ii. 684.

180. A conviction stated that the party had unlawfully returned after removal, without bringing a certificate, and that, upon being carried before the justice, he had confessed himself guilty, and the court, in the case of an action against the convicting magistrate, held that it was good, it being for the party to show, when before the magistrate, that he did not return in a state of pauperism, and the returning without a certificate being *prima facie*, at least, evidence of his being an idle and disorderly person. *Mann v. Davers*, 3 *B. and A.* 103.

181. It seems that a pauper returning after removal, without sufficient excuse, may be indicted. *Rex v. Kenilworth*, 2 T. R. 598. ii. 328.

See titles Sessions and Justices and Vagrant; and as to Removals, not to the place of Settlement, under 13 & 14 Car. 2. nor by Pass-warrant, see in Appendix, cases of *Rex v. Banbury*, Comb. 372, and *Rex v. Gravesend*, ib. 97.

SESSIONS AND JUSTICES.

1. Where authority is given to two justices to do any act, the sessions may do it in all cases, except where an appeal to the sessions is directed, by *Holt, Ch. J.* in *Rex v. Boughton, Ld. Raymond*, 426.

2. By 16 Geo. 2. c. 18. s. 1. every justice for any county, riding, city, liberty, franchise, borough, or town corporate, within their respective jurisdictions, may do and execute every act, matter, or thing appertaining to his office as justice, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice be rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act of such justice.

3. By s. 2. no act or thing, before the making this act, done by any such justice, shall hereafter be void, because the same hath been so done by any such justice, so rated or chargeable as aforesaid.

4. By s. 3. provided that nothing in this act contained shall authorize any justice for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place, where such justice is so charged, taxed, or chargeable as aforesaid.

5. And see *Rex v. Yarpole*, 4 T. R. 71. ii. 716. where an order of sessions was quashed because three of the magistrates who voted one way, and who, by so doing, made a majority on that side, were rated inhabitants of one of the contending parishes.

6. The justices at sessions may alter their judgment during the continuance of the sessions. *Salk. May alter their Judgment.* 606. *Str.* 683.

7. But where a mistake had been made by the clerk of the peace in entering an appeal as quashed, instead of discovering that

the votes were equal, (which would have had the effect of an adjournment of the appeal,) and no application was made in due time to have the error corrected, the court refused to grant a mandamus, calling upon the magistrates to enter continuances on the said appeal, and hear and determine it at the ensuing sessions. *Rex v. Leicestershire*, 1 *M. & S.* 442. *supp.* 114.

8. It seems that the sessions may, under 5 *Geo.* 2. enabling them to amend defects in point of form, alter the name of the place of settlement in an order of removal, if the mistake appear clearly to have been by the fault of the clerk. *Rex v. Harrow*, ii. 714.

9. But the sessions cannot amend an order in matters of substance which requires the examination of witnesses, their power is limited to defects of form appearing on the face of the order. *Rex v. Great Bedwin*, ii. 714.

10. A second sessions cannot vacate an order made by two justices, and confirmed by a former sessions. *Rex v. Arundel*, i. 509.

11. Nor can justices, at a subsequent sessions, make an order to review a case on which they determined at a preceding sessions. *Rex v. Caulfield*, *Salk.* 477. ii. 715.

12. A bill of exceptions will not lie to the justices in sessions on hearing an appeal against an order of removal; for the justices at sessions, on an appeal, are in the combined character of judges and jurors, and it rests with them to decide on the truth of the facts, as well as on the law of the case, and therefore it would be impossible for the King's Bench to say what portion of the evidence in any particular case they believed or disbelieved; the majority of opinion binds the whole. *Rex v. Preston*, ii. 715. *and note.*

13. The justices at sessions may refer the consideration of an appeal to other persons, *with the consent of parties*, but not otherwise; for they are not warranted to delegate their authority. With respect to the consent, Lord Mansfield said, it was sufficient if the attornies consented and attended the reference. *Rex v. Northampton*, *Cald.* 30. ii. 716. But see a previous case, *Rex v. Harding*, *Salk.* 477. where it said, that they can only refer a thing to another to examine and report to them.

14. If at the sessions the magistrates be equally divided, they can make no order, but should enter continuances until the next sessions. *Rex v. Westmoreland*, ii. 713. see also *Bodmin v. Warlingham*, ii. 737.

adjournment. 15. There is a power necessarily inherent in the sessions, to adjourn the consideration of an appeal properly lodged before them. By *Lord Ellenborough*, *Rex v. Wills*, 3 E.B. 352. *Rex v. King's Langley*, ii. 730. *Rex v. Stansfield*, ii. 732.

16. But not beyond the time fixed by 2 Hen. 5. c. 4. for holding nother original sessions. *Rex v. Grince*, ii. 730.

17. And no order made at an adjourned sessions is valid, unless continuance have been entered. *Rex v. Polsted*, Str. 1262. ii. 732.

18. The time of the original sessions ought be set forth, in an order made after an adjournment, and that the same was continued > such further time by adjournment. *Rex v. St. Michael's, Ipswich*, ii. 730. See *Rex v. Hinderclave*, ii. 723. *Rex v. Heptonstall*, ii. 731. *Rex v. Harrowby*, ii. 731.

19. Where the sessions are held at different places, there should e an adjournment from place to place. *Rex v. West Torrington*, - 734.

20. If the sessions make an order, referring a question to the termination of a judge of assize, the appeal must be continued y a proper adjournment. *Rex v. Hedingham Sible*, ii. 731.

21. If there be not justices sufficient to hold a sessions, there re not sufficient to adjourn it legally; and every act done after ch an adjournment is void. *Rex v. Wostington*, ii. 733.

22. If the justices be equally divided, and no order made, nor e sessions adjourned, it seems doubtful whether an order can be ade at a subsequent sessions, on an appeal lodged at the former. he clerk of the peace should have entered an adjournment as of urse. *Bodmin v. Warlingen*, ii. 733. But see *Rex v. Westmorend*, *ib.*

special 23. The sessions, in stating a special case, cannot make e. a special conclusion. *Anon. Salk.* 486. ii. 734.

24. But they need not state the reason of their judgment. *Southbury v. Bruddon*, ii. 734. *pl.* 885.

25. If, however, they state a bad reason for their judgment, e court will take notice of it. See *Rex v. Gayer*, ii. 734. *ut p.* 2.)

26. The sessions ought not to state the evidence from which y infer the facts stated in a special case; they should state the s themselves; for a special order of sessions is considered in the ture of a special verdict, which is not to state the evidence of the t, but the fact itself. *Rex v. Martley*, ii. 741. *Rex v. Tedford* 734.

27. And if the sessions do state evidence instead of facts, the case should be sent down again to be re-stated. *Rex v. Rainham*, 5 *T. R.* 240.

28. The fact of fraud must be positively found by the sessions, for the court of King's Bench will not infer that fact from evidence stated in the case. *Rex v. Weston*, ii. 741.

29. The justices are the proper judges of fraud; but fraud is a fact which must be found. It must be so by a jury upon a special verdict, for in that case it is not sufficient to find premises only without drawing any conclusion; the justices are judges of the fact, and they may judge of the fraud arising from the facts, but we are judges of the law upon the facts, though not of the facts themselves. If they had generally found the fraud, we might have been bound by such a general finding, but when they state the facts particularly, the matter is as much open for our determination upon it as it was for their's. By *Lord Hardwicke*, *Rex v. Tedford*, ii. 734.

30. The sessions are only to consider frauds which regard the parish (in order to gain a settlement); they are not to consider frauds between the parties; that would be making them a court of chancery. *ibid.*

31. "Fraud is never to be presumed; and, I believe, in a case sent for the opinion of this court which was pregnant with fraud, they would not presume fraud, because it was not stated." By *Lord Kenyon*, *Ch. J.* in *Rex v. Fillongley*, 2 *T. R.* 709. ii. 695. *acc. Rex v. Llanbedergoch*, ii. 750.

32. The sessions cannot be compelled to state a special case *Rex v. Oulton*, ii. 758.

33. "The magistrates ought not to be induced to send up cases to the court of King's Bench, if they have no doubt upon the question, in order to avoid unnecessary expense." *Bayley, J.* in *Rex v. Darley Abbey*, 14 *E. R.* 285.

34. "Nor unless they entertain serious doubts." *Bayley, J.* in *Rex v. Burbach*, 1 *M. & S.* 376.

35. The court will not permit them to raise a general question, by omitting to state particular circumstances belonging to the case. *Rex v. Francis Hill*, ii. 280.

36. But if the sessions order a special case to be made, and before it is settled the sessions be inadvertently adjourned, the court of King's Bench will grant a mandamus to compel them to proceed in the matter. When the justices allow a case, they virtually say, that an adjournment shall take place until the case be made; the want

of an adjournment, being merely the omission of the clerk, may at any time be rectified. *Rex v. Sussex*, ii. 751.

37. When the justices entertain a doubt, they may, without consent of parties, direct a case to be made. *Ibid.*

38. The sessions, on a case being sent back to be re-stated, ought to proceed as in an entire new business. *Rex v. Page*, ii. 743.

39. Where the court of quarter sessions reject evidence as inadmissible, which the court of King's Bench, upon a case sent up to them, hold that they should have received, and, in consequence, send the case back, the whole case must be again gone into by the sessions; it is not enough merely to hear the rejected evidence without obliging the respondents again to prove their case. *Rex v. Bramley*, 6 T. R. 331, ii. 749.

40. But in such case they are not necessarily obliged to hear new evidence where the only defect in the case is their not having drawn any conclusion from the facts stated. *Rex v. Bray*, ii. 743.

41. But the sessions may hear new evidence to clear up a doubt as to the facts. *ibid.*, and *Rex v. Hitcham*, ii. 742.

42. The court will not send a case back to be rectified by the minutes of the sessions, if the fact required to be answered be not clearly stated. *Rex v. Bradenham*, ii. 742.

43. Nor will the court send a case to be re-stated, merely on account of the sessions having improperly rejected hearsay evidence, where such evidence, if received, ought not to have led them to the conclusion which it was brought forward to establish. *Rex v. Nutley*, ii. 745.

44. Where on an affidavit that the clerk of the peace did not state the evidence truly, it was moved to send back a case to be re-stated; the court said, that they could not admit an affidavit against the case as returned by the justices; noticing besides, in this particular case, that the affidavit was by an interested person. *Rex v. Burgh*, ii. 747.

45. If the sessions confirm an order of justices, the court of King's Bench will not quash such order, but will quash the order of sessions, and direct the sessions to notice the order of two justices. *Rex v. Yarpole*, ii. 752.

46. If an order of removal be confirmed at the sessions, and both orders be afterwards removed into the King's Bench by *certiorari*, on a case reserved, and the court disapprove of the orders for want of jurisdiction of the removing magistrates appearing on the face of the original order, the court will quash both

the orders without remitting the matter back to the sessions to quash the original order, for the purpose of enabling them to give a maintenance under 9 *Geo. 1. c. 7. s. 9.*; and the court would not admit an application for amending their judgment for quashing both orders made in the term subsequent to the judgment so pronounced. *Rex v. Moor-Critchell, ii. 753.*

47. When a statute gives a party a right of appeal, on giving security to a specified amount, he may enter and respite his appeal at the next sessions, after having given such security without notice to the other side; but after the appeal has been respited, if he do not give the usual notice of trying it, the sessions may dismiss it altogether. *Rex v. Salop. 2. B. & A. 694.*

48. The court of King's Bench are not at liberty to examine a decision by the sessions, unless a case be sent up; and a *writ of mandamus* to re-hear an appeal, was refused where the justices had, in their discretion, heard evidence only on one side. *Rex v. Carnarvon, 4 B. & A. 86.*

49. By 7 *Jac. 1. c. 5.* and 21 *Jac. 1. c. 12.* in all actions brought against justices, &c. in the execution of their office, they may plead the general issue and give the special matter in evidence; and if verdict pass for them shall have double costs; nor shall the venue in such action be laid but in the county where the fact was committed.

50. By 2 *Geo. 2. c. 44.* no writ shall be issued out against, nor any copy of any process, at the suit of a subject, shall be served on any justice for any thing by him done in the execution of his office, until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause or action which such party hath or claimeth to have against such justice; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to have the fee of twenty shillings for the preparing and serving such notice, and no more.

51. By s. 2. such justice, at any time, within one calendar month after such notice as aforesaid, may tender amends to the party complaining, or to his or her agent or attorney; and in case the same be not accepted may plead such tender in bar to any action to be brought against him, grounded on such writ or process together with the plea of not guilty, and any other plea with the leave of the court, and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his or her action, or in case judgment shall be given for such defendant upon demurrer, such justice shall be intitled to the like costs as he would have been intitled unto in case he had pleaded the general issue

ily; and if, upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover together with his or her costs of suit.

52. By s. 3. no such plaintiff shall recover any verdict against such justice in any case where the action shall be grounded on any act of the defendant, as justice, unless it be proved upon the trial of such action that such notice was given as aforesaid; but in default thereof such justice shall recover a verdict and costs as aforesaid.

53. By s. 4. in case such justice neglect to tender any amends, or have tendered insufficient amends, before the action brought, he may go leave of the court where such action shall depend at any time before issue joined, pay into court such money as he shall see fit; whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

54. By s. 5. no evidence shall be given by the plaintiff on the trial of any such action, of any cause of action, except such as is contained in the said notice.

55. By s. 6. no action shall be brought against any constable, or other officer, or any person acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice, until demand hath been made or left at the usual place of his abode, by the party intending to bring such action, or by his, or her, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, or other officer, or against such person acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, then on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices; and if such action be brought jointly against such justice or justices, and also against such constable &c. then on proof of such warrant the jury shall find for such constable, &c. notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, then in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid.

56. By s. 7. provided, that where the plaintiff in any such action against any justice shall obtain a verdict, in case the judge before whom the cause shall be tried, shall in open court certify on the back of the record that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to double costs of suit.

57. By s. 8. no action shall be brought against any justice for any thing done in the execution of his office, or against any constable or

other officer or person acting as aforesaid, unless compensated within six calendar months after the act committed.

58. By 43 Geo. 3. c. 141. s. 1, 2. magistrates are still further protected with regard to convictions.

59. (See the cases relative to the statutes above-mentioned. 3 *Chitt. Burn. Just.* 140. et seq.)

60. Generally speaking, magistrates are not punishable unless there be some manifest act of oppression or wilful abuse of power. "no justice ought to suffer for ignorance where the heart is right; on the other hand, where magistrates act from undue, corrupt or indirect motives they are always punished by this court." *Lord Mansfield. Rex v. Cozens, Doug.* 426. i. 258. and *Rex v. Young & Pitts, Burr.* 556, &c.

61. And in the latter case, it seems that a criminal information would issue, and that such informations have issued against magistrates in sessions; such conduct also is indictable. *Rex v. Scott, 7 T. R.* 374. *Rex v. Seaford, 1 Bl. Rep.* 452. 2 *Hawk. c. 1. s. 20. Rex v. Fielding, Burr.* 720.

62. But, even where a justice acts illegally, if there be no imputation of improper motives, it seems that he is not punishable by criminal information. *Rex v. Palmer. Burr.* 162. *Rex v. Borne, 3 B. & A.* 432.

63. And in no case shall a magistrate be punished both civilly and criminally for the same offence; and if an action have been commenced it must be discontinued before an information will issue; nor can an indictment and an action be proceeded by together for the same supposed offence. *Rex v. Fielding, Burr.* 720.

64. Where a statute authorized the issuing of a commission declaring the persons named therein justices of the peace within a certain district, but that no one was authorized to act unless he had taken the oaths and delivered in the certificate required by 18 Geo. 2. c. 20. to be taken by justices for counties, the court held that the acts of a person named in such commission, who had taken the oaths under a *dedimus protestatem*, but had omitted to take the oaths and sign the certificate so required by the statute, were not invalid, since the restraining clauses were prohibitory only, making it unlawful in him to act, but not nullifying his judicial acts. *Margate Pier Company v. Hannam, 3 B. & A.* 266.

65. By 59 Geo. 3. c. 28. the justices present at any quarter or general sessions, may, on the first day of their being so assembled, take into their consideration the state of the business likely to be brought before

them at such quarter session or general session; and if it shall appear to them that such business, if heard and determined by the whole court, is likely to occupy more than three days, including the day of their being so assembled, the said justices may appoint two or more justices, one of whom shall be of the quorum, to sit apart from themselves in some place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices are at the same time proceeding in the dispatch of the other business of the same court; and the proceedings so had by and before such two or more justices so sitting apart shall be as good and effectual in the law to all intents and purposes as if the same were had before the court assembled and sitting as usual in its ordinary place sitting, and shall be inrolled and recorded accordingly.

66. By s. 2. provided, that when two or more justices shall have set apart in manner before directed by this act, and orders, rules and regulations shall have been made for the apportionment of business, such orders, rules, and regulations shall remain and continue in force as long as shall be thought expedient, without the necessity of renewing such orders rules and regulations at each succeeding session, to the intent that the same may become public and better known to all professional and other persons engaged in or in any manner interested in the business of such quarter session.

67. By s. 3. the clerk of the peace or his deputy (wherever two or more justices shall sit apart at any quarter session) shall appoint a fit person to record the proceedings so had before the justices sitting apart; and such proceedings shall be delivered over to the clerk of the peace, or his deputy, and shall be equally deemed to be a part of the records of such session, as if the same proceedings had been recorded by the clerk of the peace himself; and the justices assembled at the quarter session may make an order upon the treasurer of the county to pay to the clerk of the peace such money as they deem a fit and reasonable remuneration to the clerk of the peace for such purpose as aforesaid; and such justices may appoint an additional *crier*, and grant him such remuneration for his pains as they shall deem reasonable, to be in like manner paid by the treasurer of the county.

68. *With respect to Costs, see that title.*

69. By 54 Geo. 3. c. 84. the Michaelmas Sessions are to be held in the first week after Oct. 11, except in London and Middlesex.

SETTLEMENT.

- I. BY BIRTH.
 - II. — PARENTAGE.
 - III. — MARRIAGE.
 - IV. — RENTING A TENEMENT.
 - V. — ESTATE.
 - VI. — SERVING AN OFFICE.
 - VII. — HIRING AND SERVICE.
 - VIII. — APPRENTICESHIP.
 - IX. — PAYMENT OF RATES.
 - X. OF FOREIGNERS AND MISCELLANEOUS.
-

I. BY BIRTH.

- a. Of Illegitimate Children.*
 - b. — Legitimate Children.*
 - c. — Evidence.*
-

1. By 54 Geo. 3. c. 170. s. 2. no person shall acquire any settlement in any district, parish, township, or hamlet by reason of being born of the body of any mother actually confined as a prisoner within the walls of any prison, or any house licensed for the reception of pregnant women in pursuance of 13 Geo. 3. c. 82.

2. By s. 3. any person born of the body of any poor person in any house of industry, or house for the reception and care of the poor of any district, parish, township, or hamlet locally situated in any district, &c. contributing to the expenses of maintaining the poor in such house or in any other district, &c. not contributing to such expense shall, so far as regards the settlement of such person, be taken to be born in the district, &c. by whom and on whose account the mother of such person was sent to, received by and maintained in such house.

3. By 13 Geo. 2. c. 29. no child, nurse, or servant received into, or employed in the Foundling Hospital, shall, by virtue thereof gain any settlement in the parish where such Hospital is situate.

a. Of Illegitimate Children.

1. The place of birth is, in all cases, the *prima facie* place of settlement. *Rex v. Heaton Norris*, 6 T. R. 653.

2. A bastard is *ex necessitate* settled in the parish or place where born or first found; for being *nullius filius*, it could not otherwise be provided for. *Whitechapel v. Stepney, Carth.* 433. ii. 1.

3. If a woman lodge in a parish, and be delivered of a bastard child, the child is settled in such parish, although it do not appear the mother has gained a settlement there. *Rex v. Spitalfields, Raym.* 567. ii. 2.

4. A bastard is settled where born, though its parents be dead, they were, during the whole of their lives, reputed to be man and wife. *Rex v. St. Peter's Worcestershire*, 25. ii. 4.

5. And so even if a child be born under a marriage *de facto*, if it bear by fair conclusion that it is a bastard; as if its mother's lawful husband be alive. *Rex v. Lubbenham*, 4 T. R. ii. 9.

6. The bastard of a certificated person is settled in the place of birth, for it is not such issue as will follow the settlement of its father or mother: neither is such bastard his or her child within the intention of the statute 8 and 9 Will. 3. c. 30. *Rex v. Hilton*,

7. Even although the certificate undertake that the certifying parish shall provide for the certificated person and her child, (she being then pregnant) for the words her child must be taken to mean illegitimate child then in being. *Rex v. Wyke, Bulstr.* 349. ii. 6.

8. But if a certificate expressly undertake to provide for "a pregnant woman, and the child she now goeth with," such child, although born a bastard, shall be settled in the mother's parish, and in the parish where born. *Rex v. Ipsley*, ii. 6.

9. So where a child is born a bastard, and its parents afterwards marry, and the father procures a certificate for himself, his wife, and his child; such bastard shall have its father's settlement, and not be settled where born. *Rex v. Tostock*, ii. 20.

10. But a bastard born several years after a certificate engaging to receive the child the mother was then pregnant with, and all other children she might afterwards have, and stating her to be an unmarried woman, is settled where born. *Rex v. Mathon*, 7 T. R. ii. 10.

11. To this rule, however, that bastards are settled where born, there are several exceptions; for if any fraud shall be used to pro-

cure the birth of a *bastard* in any particular parish, such child shall not be *prima facie* settled in the parish in which it was born, but in the parish from whence its mother was fraudulently and collusively removed. *Tewksbury v. Twining*, ii. 1.

15. "Illegitimate children must be kept by the parish in which they are born; but if any improper practice appear, then this rule fails, and the child shall be kept and provided for by the parish where the mother dwelt, and where she was got with child, and which had used the practice to have the child born in another parish." *Per Sir William Jones, J. ibid.*

16. But if an unmarried woman come accidentally into one parish and remove to another by the advice of some of the parishioners, and be there delivered of a *bastard* child, it shall be settled where born. *Masters v. Child*, 3 *Salk.* 66. ii. 2.

17. Or if a child be born on the road while the mother is endeavouring to reach her own parish, without fraud, it is settled where born. *Rex v. Astley*, ii. 8.

18. So also if an unmarried woman big with child, be removed, and, pending an appeal against such order, be delivered of a *bastard* child; such child is not settled where born if such order be afterwards quashed, but is settled in the parish from which its mother was so removed. *Boreham v. Waltham*, ii. 2.

19. So also if a single woman with child be unjustly removed from one parish, and be delivered of a *bastard* in the other parish, pending the order though before appeal, such *bastard*, on the order being reversed, is not settled where born. *Westbury v. Coston*, ii. 3.

20. So also if, while the parish-officers are carrying a pregnant woman from one place to another by virtue of an order of removal, she be delivered on the road, *in transitu*, of a *bastard* child, such *bastard* is not settled in the parish where born, but shall go with the mother to the parish to which she is removing by virtue of the order. *Rex v. Jane Grey*, ii. 3.

21. So also a *bastard* born after an order of removal is made out, and before actual removal, is not by such birth settled where born, but shall go to the mother's parish. *Rex v. Icleford*, ii. 3.

22. So also if a single woman with child be removed from A. to B., and privately return into the parish of A., and be there delivered of a *bastard* child, the settlement of such child is in B., and not in the parish where it is born. *Rex v. Landinabae*, ii. 9. *note.*

23. If a woman big with child be sent to the house of correction, and be there delivered of a *bastard*, the child shall be sent to the

sh from which the mother was sent to the house of correction.
Kley v. Whitborn, ii. 2.

4. So also a bastard born in a county gaol to which the mother
been committed for safe custody, is not settled where born.
King v. Hereford, ii. 4.

5. And bastard children born in workhouses belonging to
ishes united under the 9 Geo. 1. c. 7. s. 4. and locally situated
a third parish, it is said, are not settled in such third parish, but
the parish from which their mother the pauper was sent to such
rkhouse. *Rex v. St. Peter and St. Paul*, i. 443.

16. By 17 Geo. 2. c. 5. s. 25. bastards born in the streets, &c. where
mother is apprehended while wandering and begging in a *state of*
rancy, shall not be settled where born, but shall have the mother's
tlement.

17. By 33 Geo. 3. c. 54. s. 25. bastards born under a certificate from a
efit society, shall have the mother's settlement.

8. By 35 Geo. 3. c. 101. s. 6. if any unmarried woman be delivered of
astard child during the suspension (for sickness) of an order of removal,
settlement of the mother shall be deemed the settlement of such
d; but this act does not affect other acts before made, touching bas-
l children or their mothers or reputed fathers.

9. But the last-mentioned statute does not repeal the 33 Geo.
c. 54., and therefore where an unemancipated daughter was de-
ered of a child in the township of T. during her father's re-
nence there, under a certificate acknowledging him to be a member
a friendly society established under 33 Geo. 3. c. 54., (by s. 25.
which statute it is enacted that bastards born under a certificate
on such society, shall have the mother's settlement,) it was held
t such certificate extended not only to him, but to all the mem-
s of his family also; that the daughter, therefore, was at the
e of her delivery residing in the township under the authority
33 Geo. 3. c. 54., and that by s. 25. of that act the settlement of
child followed that of the mother. *Rex v. Idle*, 2. B. & A.
9.*

b. Of Legitimate Children.

30. The place of birth is also *prima facie* the place of settlement
legitimate children, until the settlement which such children in-
rit by parentage can be discovered. *Cripplegate v. St. Saviour's*,
ort. 265. ii. 13.

31. Therefore, on a question respecting the settlement of a mar-
d woman, if the appellants prove that the pauper was born in the

* See title Bastard, Arts. 158, 173, 174.

parish of the respondents, this is good *primâ facie* evidence so as to oblige the respondents to show that the pauper has gained a different settlement. *Rex v. Woodford*, ii. 13. *Rex v. Heaton Norris*, 6 T. R. 653. ii. 15, note: also *Rex v. Whirley*, ii. 60. *Spitalfields v. St. Andrew, Holborn, Fort.* 307.

32. But birth is only *primâ facie* evidence of settlement: for where the sessions had decided in favour of a settlement in A., by which the pauper's father was proved to have been relieved while resident in another parish forty years before the decision and antecedent to the pauper's birth, and the only evidence to oppose this was the pauper's own birth in B., the order of sessions was confirmed. *Rex v. Wakefield*, 5 E. R. 335. ii. 15.

33. The primary settlement by birth may be vacated by a new settlement by parentage, although the child be under seven years of age. *Cunmer v. Milton*, 6 Mod. 87. ii. 12.

34. Where the mother of a child born in one parish dies in another while she is passing to a third, such child shall not be settled in the parish where it was left destitute by the death of its mother, but shall be settled where it was born. *Clavely v. Burton*, ii. 11.

35. The place where a legitimate child is first found is the place of its legal settlement, until the place of its birth or its derivative settlement can be discovered. See *Dalton*, c. 73. p. 168. Comb. 364.

36. Therefore where the mother of a young child was executed for felony, and neither the place of the child's birth nor of the mother's settlement could be found, the child was held to be settled in the parish where the mother was apprehended. *ibid.*

37. By 8 & 9 Will. 3. c. 30. the legitimate children of certificated persons shall not gain a settlement by birth in the certificated parish.

See *Rex v. Great Clacton*, title *Removal*.

c. Evidence.

38. A copy of the parish register of christenings, and proof of identity of the person is sufficient evidence to prove a settlement by birth. *Creech v. St. Michael's*, ii. 13.

39. The birth of a pauper is sufficient *primâ facie* evidence of a settlement to oblige the other side to go on. *Rex v. Woodford*, ii. 13. *Rex v. Whirley*, ii. 14.

40. Hearsay evidence of the declarations of a deceased father, as to the birth of his bastard child, is not sufficient to prove the birth settlement of such child. *Rex v. Erith*, 8 E. R. 539. *supp.* 34.

41. But see title *Evidence*, ante, Art. 31.

BY PARENTAGE.

- a. *Of the Father.*
- b. ——— *Mother.*
- c. — *Emancipation.*
- d. — *Evidence.*

1. The father's settlement, if it can be found, is the settlement of his legitimate children, wherever born or dropped. *Corwell v. Shillingford*, Fo. 269, ii. 18.

2. And it makes no difference that the child is born after the death of the father, (so that he be within time to allow of legitimacy) or is an idiot. *Rex v. Clifton*, ii. 19. *Howard's case*, Salk. 427. ii. 7.

3. The settlement of the father is the settlement of his children, although he reside elsewhere at the time of and ever after their birth; and the children may be removed to such settlement after the father's death, although they were never there during his lifetime. *St. Giles, Reading, v. Eversley, Blackwater, Str.* 580. ii. 19.

4. The father's settlement communicated to his children is not altered or destroyed by the marriage of his widow. *Rex v. Saxmundham*, ii. 18, pl. 38.

5. And if the father remove into a different parish, and there gain a new settlement, his children under the age of seven years, and such other of them as have not gained settlements in their own right, shall have the settlement thus newly acquired. *Rex v. Cumer*, Salk. 528. ii. 18.

6. But it is incumbent on the parish to which such nurse children are removed, and wishing to be relieved from supporting them, to show that their *derivative settlement* has been changed by a new settlement subsequently acquired; and therefore it has been held, that nurse children may be removed without stating either the death or the settlement of the parents. *Rex v. Bucklebury*, ii. 21. See also *Rex v. Barton Turfe*, ii. 26.

7. For proof of the father's settlement is sufficient to establish the settlement of his children in the same parish, if nothing appear to contradict it. *Rex v. Stone*, ii. 21.

8. Therefore, evidence that the pauper's father had been relieved forty years before by the parish of A. while he resided in the parish of B., is evidence of the pauper's settlement in A., although it ap-

pear that the pauper was born in another parish. *Rex v. Wakefield*, 5 E. R. 33. ii. 15.

9. The place of birth is the weakest evidence of settlement. By *Le Blanc*, J. *ibid*.

10. No recourse shall be had to the mother's settlement till the father's can be no longer traced; and therefore it seems that a child shall rather have the settlement of the paternal grandmother than of its own mother. *Rex v. St. Matthew, Bethnal Green*, ii. 29. 1 Nol. 275.

11. The attainder of the father does not deprive his children born subsequently of the settlement which he had before. *Rex v. St. Mary, Cardigan*, 6 T. R. 116. ii. 22.

12. And in a recent case it was decided, that an attainted felon, discharged by an order of the Secretary of State, under the sign manual, signifying his Majesty's pleasure to grant him an unconditional pardon, and directing his name to be inserted in the next general pardon, (of the issuing of which pardon there was some negative evidence); and having afterwards purchased a copyhold for more than 30l. to which he was admitted upon surrender formally made, and upon which he resided, receiving the profits, for nine years without impeachment of his title, was held to gain a settlement by such residence thereon for forty days, and to communicate such his settlement to an unemancipated child, part of his family. *Rex v. Haddenham*, 15 E. R. 463. *supp.* 169.

b. Of the Mother.

13. If the father have no settlement, the children shall have the settlement of the mother. *Rex v. St. Botolph's*, ii. 20.

14. For if a woman marry a man who has not gained any settlement in England, or having gained a settlement, if it cannot be found, her maiden settlement is not suspended by the coverture. *Rex v. St. Botolph's, Bishopsgate*, ii. 178.

15. And the mother's settlement shall not only be the settlement of her children, but of her grandchildren, if their respective fathers have no settlement. *Rex v. St. Matthew, Bethnal Green*, ii. 29.

16. If a mother acquire a new settlement, not in her own right, but by marriage with a second husband, her children by her first husband retain their original settlement by birth or parentage, and cannot be removed with the mother to her acquired settlement, except for nurture, and while under seven years of age. *Wangford v. Brandon*, ii. 23, *pl.* 49.

17. So if a woman, previous to her marriage, acquire a settlement in her own right, as by hiring and service, and after the death of her husband acquire a new settlement by marriage with a second husband, the children of her first husband, if the place of his settlement be unknown, shall go to the parish where the mother gained a settlement in her own right, and not to the place of her second husband's settlement. *Rex v. St. Giles in the Fields*, ii. 24.

18. Where a woman, after her husband's death, obtains a settlement in her own right, her unemancipated children shall partake of it, notwithstanding their previous derivative settlement from the father. *Rex v. Woodward, Ld. Raym.* 1473. ii. 24. *St. George v. St. Catharine, Ld. Raym.* 1476. ii. 23.

19. Thus it was held, that a child of ten years of age, who possesses a derivative settlement from its father, may, after the father's death, acquire a new settlement from its mother, by going with her into another parish, and living with her as a part of her family upon her own estate. *Rex v. Barton Turfe*, ii. 26. *pl.* 55.

20. And again, where the wife, after the death of her husband, resided forty days upon a copyhold estate which she had before his death in her own right, she thereby gained a new settlement, which was communicated to her children, instead of that which they had before in right of their father. *Rex v. Oulton*, ii. 28.

21. A widow, by residence during her quarantine, gains a settlement for herself and her children who are not emancipated, although they do not reside with her during the whole of the forty days. *Rex v. Long Whittenham*, ii. 29.

22. But a wife, during the life of her husband, cannot gain a different settlement for her children from that which they derive from their father by parentage. *Berkhampstead v. St. Mary Northchurch*, ii. 25.

c. Of Emancipation.

23. Children, after the age of seven years, may become emancipated from their parents, and acquire new settlements in their own right. *Dumbleton v. Beckford, Salk.* 470. ii. 30.

24. A son, eight years of age, who, on the removal of his father into another parish, is left behind, and continues to work for himself, and afterwards marries and continues working for himself and his family for twenty years, is thereby separated from his father's family, and cannot derive a new settlement from his

father acquired by him after his removal from the parish in which this son was so left. *Eastwoodhey v. Westwoodhey*, Str. 450. ii. 31.

25. A son, who, when nineteen years of age, leaves his father's family, and goes into another parish, where he marries, is so far emancipated, that he cannot follow a subsequent settlement of his father. *St. Michael in Norwich v. St. Matthew, Ipswich*, ii. 32.

26. And if a son, after he is one and twenty years of age, marry, and live separate with his wife and family from his father, who is certificated, though in the same parish, yet he is, to the same effect, emancipated. *Budgen v. Amptihl*, ii. 33.

27. So if a son having lived with his father under a certificate, until he is 24 years of age, marry, live in a separate house, have children, and take land under 10*l.* a-year, for which he is rated and pays to the poor-rate, he is thereby emancipated from his parent family, and gains a settlement in the certificated parish. *Rex v. Heath*, 5 T. R. 583. ii. 614.

28. So also it seems that a son who supports himself entirely by his daily labour, and is married, is emancipated, although he lodges and board in his father's house, for which he pays him five shillings a-week; at least, such a person is not a part of his father's family for the purposes of a certificate. *Rex v. Storrington*, 7 T. R. 183. ii. 338.

29. Where a son, of age, marries, he cannot follow a new settlement of his father, although he continue to live with his father's family as part thereof. *Rex v. Everton*, 1 E. R. 526. ii. 52.

30. But where a son married, and lived with his wife and children separate from his father and mother in the same parish in which his father was settled, it was, in one case, held to be no emancipation, as it did not appear that he had gained any settlement in his own right. *Rex v. Cold Ashton*, ii. 34.

31. By this, however, it was said, was meant that so long as the son continued a part of his father's family, the derivative settlement of his parents was not abandoned; for he might be emancipated although he never acquired a settlement in his own right. *Rex v. Stanwis*, 5 T. R. 670, ii. 45.

32. And in *Rex v. Cold Ashton*, Lord Mansfield said, "the term emancipation, in the case of settlements of poor persons, is a vague term, and not applicable to the subject. The children of all parents must have the settlement of the father till they acquire one for themselves."

33. If a son enlist himself as a soldier, and continue four years in the service, he thereby emancipates himself from his father's

family. *Rex v. Walpole St. Peter's*, ii. 35. acc. *Rex v. Stanwix*, 5 T. R. 670. ii. 45.

34. And see *Rex v. Roach*, ii. 47. where Lord Kenyon said, that in *Rex v. Walpole St. Peter's*, the soldier became liable to a different control, and it was looked upon as so clear that he could not be re-incorporated into his father's family, that the point was not argued, and that Mr. Justice Aston, who was a very able sessions lawyer, looked upon the case to be properly decided. As to the point of the person being a soldier, Lord Kenyon said, he could not think that that signified.

And by Lawrence, J. "if the son, having enlisted under 21, had returned before he attained that age, he would have been considered as part of his father's family, or if he had quitted the army before he attained 21, without returning home, the father might have reclaimed him by suing out a *habeas corpus*, but here he had attained the age of 21 before he left the army, therefore the father had lost all control over him."

35. But a drummer under age who entered into the same militia of which his father was serjeant, and lived with his father, permitting him to receive his pay, was held not to be thereby emancipated. *Rex v. Woburn*, 8 T. R. 479, ii. 50.

36. No child, whilst he continues a member of the parent family can be emancipated until he come of age, marry, gain a settlement in his own right, or in some way contract a relation inconsistent with the idea of his continuing any longer part of such family. *Rex v. Witton cum Twambrooke*, 3 T. R. 355. ii. 43.

37. But see *dict.* by Lord Kenyon in *Rex v. Roach*, ii. 45. that with regard to a supposed expression of his in *Rex v. Witton cum Twambrooke*, he thought he could not have said, because it never was his opinion, that the mere circumstance of a son's attaining twenty-one, was an emancipation so as to prevent his having a derivative settlement gained by his father afterwards, if he continued to live with his father.

38. Where a son, who at fifteen years of age bound himself apprentice, served out part of his time, and worked about the country in the way of his business, but went to his father's house whenever he pleased, kept his holiday clothes there and considered it as his home, he was held not to be emancipated from his father's family. *Rex v. Halifax*, ii. 36.

39. So nine or ten years' residence of a child, by the direction of his father, in a friend's house for the purpose of his support, is

not, if he occasionally visit his father's house as his home, such an absence as will, upon the principle of abandonment, be considered an emancipation. *Rex v. Tottington Lower End*, *Call.* 284. ii. 37.

40. So a boy hired out by his father several years successively, and never living with him, but the father receiving his wages, is not emancipated, but continues to follow his father's settlement acquired after the hiring out. *Rex v. Stratton*, ii. 38.

41. So also where a daughter, who at the age of ten years had the misfortune to be rendered incapable of work by her hand being burnt off, and her father, from reduced circumstances, being unable to maintain her, procured her to be maintained by the parish, and at twenty years of age she was accordingly placed in the workhouse, where she remained for several years, the court held that it was nothing like an emancipation. *Rex v. Broadbent*, ii. 39.

42. So also a child, who leaves its father's family when only five years old, and lives with different relations till ten, is not emancipated, but shall follow the settlement of its father, if he have not gained any settlement in his own right. *Rex v. Offchurch*, 3 *T. R.* 114. ii. 40.

43. A son, when he was sixteen years of age was bound apprentice for four years, which he served, and never afterwards returned to his father's family, but the indenture was void for want of a stamp; and it was held that he was not emancipated, but followed the father to a new settlement which he had gained while the son was serving under the indentures. *Rex v. Edgeworth*, 3 *T. R.* 353. ii. 42.

44. A son of a certificated person, who leaves his father's family at nineteen years of age, and serves a year under a hiring in an extra-parochial place, and at the end of the year returns unmarried and under age, and not having gained a settlement in his own right, to the parish where his father lives under the certificate, and there enters into service, is not thereby emancipated. *Rex v. Collingbourn Ducis*, ii. 44.

45. The same where the service was under an apprenticeship to a certificated person, but the son returned to his father under similar circumstances. *Rex v. Hardwicke*, 11 *E. R.* 578.

46. Where, during an apprenticeship to a certificated man, the father of the apprentice gained a new settlement, his son being then eighteen years old, it was held that this new settlement descended to such child although he did not return home till after

twenty-one. "Unless he had gained a settlement himself, his domicile continued at his father's house, and he was liable to be removed there at any time; if indeed he had withdrawn himself from his father's family after twenty-one, no doubt it would have been an emancipation from that period; but a separation, whilst under twenty-one, does not produce that effect, unless a subsequent settlement be gained." *Rex v. Huggate*, 2 B. & A. 584.

47. Nor is the son of a certificated person, who serves a year in the certifying parish, part of a year in a third parish, and two years in the certificated parish, thereby emancipated, if he return to and reside with his father, although the first and last services were under regular hirings for a year. *Rex v. Ingworth*, i. 49.

48. Nor can a person gain a settlement by hiring and service with the son of a certificated man continuing to reside in the certificated parish with his mother after the father's death, as part of her family, though the son were of age, and carrying on business for himself; such circumstances not amounting to emancipation. *Rex v. Sowerby*, 2 E. R. 276. ii. 53.

49. But see *Rex v. Silton*, (1 Wils. 184. ii. 32.) where, a certifying parish having bound out the son of a certificated man apprentice in a third parish, the court held that he was thereby emancipated.

50. Where a daughter of twenty-two years of age leaves her father's house, and hires herself in the same parish as a wet-nurse, and after staying only eight weeks in her place, returns to and continues with her father's family, she is thereby emancipated, though she have gained no settlement in her own right, and is not entitled to a settlement gained by her father between the time of her departure and her return. *Rex v. Roach*, ii. 46.

"The rule to be extracted from the cases, is this; if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them during the age of pupilage, he is to all intents a part of his father's family, and his settlement will vary with that of his father; but if, when the time arrives, at which, in estimation of law, the child wants no further protection from the father, the child remove from the father's family, he is not, for the purpose of a derivative settlement, to be deemed part of that family." By *Lord Kenyon*, *ib.*

See a part of this judgment cited *ante* Art. 75. *Rex v. Walpole*, and *Lawrence*, J. observed that the same principle governed both cases, and that the maid-servant by putting herself out of her

father's control, after she had attained twenty-one, the relation between her and her father's family ceased. *Ibid.*

51. But in any case where a child acquires a settlement of his own, although he may afterwards, during his minority, return and live with his father's family, he does not follow the settlement of his father subsequently obtained.

Thus where a pauper being settled by parentage in A, at the age of thirteen years hired and served for a year in A, and afterwards when he was sixteen years old returned to and lived with his father's family until he became of age: held, that having acquired a settlement of his own in it, he did not follow the settlement of his father subsequently gained in another parish while the pauper continued to reside with him. *Rex v. Bleasby*, 3 B. & A. 377.

52. A widower, having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him but without any contract of hiring to give her a settlement of her own, the father in the mean time having gone out to service: held that on coming of age she was emancipated. *Rex v. Cowhoneyborne*, 10 E. R. 88. *Supp.* 115.

To constitute emancipation, it is clearly not necessary for the child to have obtained a new settlement of its own. *ib.*

53. It is to be observed that where a child emancipates itself by contracting some new relation, as by hiring and service, such emancipation takes date from the termination, not from the commencement of the service. *Rex v. New Forest*, 5 T. R. 478. ii. 182.

54. If the derivative settlement be once put an end to by emancipation it cannot be regained. *Rex v. Roach*, 6 T. R. 247. ii. 46.

d. Evidence.

55. The derivative settlement of a pauper may be proved by other evidence than the father's testimony. *Rex v. Bucklebury*, 1 T. R. 164. ii. 645.

56. Proof of the father's settlement is sufficient to establish the settlement of the son in the same parish, if nothing appear to contradict it. *Rex v. Stone*, 6 T. R. 56. ii. 21.

57. The evidence of the man is admissible to prove that no marriage has taken place between him and his supposed wife. *See* ii. 4. and authorities cited in the note.

SETTLEMENT BY MARRIAGE.

- a. *Of the Wife's Settlement from the Husband.*
- b. ————— in her own right.
- c. — Marriage and the Evidence in proof of it.

a. *The Wife's Settlement in Right of the Husband.*

1. The husband's settlement is, by the intermarriage, communicated to his wife, though she have never been there. *Rex v. Pincehorton, M. 3. G. 1. St. Giles v. Eversley, ii. 75.*

2. And during the coverture the wife cannot gain a different settlement from her husband's. *Rex v. Aythorpe Rooding, ii. 75.*

3. And even after her husband's death, she shall still retain his settlement, until she gain a new settlement either in her own right or by marriage with another husband. *St. Giles v. Eversley, ib.*

4. If the wife be removed to "her last legal settlement," it shall be intended the settlement of her husband. *Rex v. Higher Walton, ii. 81.*

5. So if the absence of the husband be only temporary, and his wife be removed to any place *eo nomine* as his wife. *Rex v. Hinxworth, ii. 83. Rex v. Leigh, ii. 85.*

b. *The Wife's Settlement in her own Right.*

6. The settlement which a widow gains in her own right, cannot be changed by evidence that she was afterwards married to a man, who, in his lifetime, told her he was born in Yorkshire; for it is incumbent on the parish, where she is proved to have acquired a settlement, to show a subsequent derivative settlement. *Rex v. Hensingham, ii. 85.*

7. The maiden settlement of a woman is not extinguished, but suspended only during the coverture. *See 2 Nol. 258.*

8. And if she marry a man who has no settlement, or whose settlement cannot be discovered, her maiden settlement is not even suspended by the coverture. *Rex v. Wilborough Green, ii. 76.*

9. And therefore where a single woman, who had acquired a settlement in her own right, married an Irish sailor, who had no settlement as far as she knew of, and who was alive as she believed, having heard that he was so only two months before her removal, but whose settlement, if he had gained any, did not appear, it was held that she was entitled to her own settlement. *Rex v. St. Botolph, Bishopsgate*, ii. 78.

A case of *Stratford v. Norton*, And. 307. *Burr. S. C.* 122. was mentioned on this occasion, in which it had been held that the settlement of the wife was at all events suspended during the coverture, whether the husband had or had not a settlement; but in *Rex v. St. Botolph*, the court expressed themselves of a contrary opinion.

10. Where the evidence was that the pauper's husband was born in Wiltshire, but in what parish was not known, or whether he had gained any other settlement; and that he had run away, but was still living for any thing the pauper knew to the contrary, it was held that she was entitled to her maiden settlement, for otherwise she must be starved. *Rex v. Westerham*, ii. 77.

11. So where the pauper had married an Irishman, who had not gained any settlement in England, it was held that she was settled in her own parish. *St. Giles's v. St. Margaret's*, ii. 77.

12. For in all such cases, unless the husband's settlement can be shown, the wife's own settlement remains undestroyed by the intermarriage. *Rex v. Woodsford, Cald.* 236. ii. 86. *acc. Rex v. Ryton*, ii. 83. *Rex v. Hedsor*, ii. 86.

See also *Rex v. Harberton*, 15 *E. R.* 311. *supp.* 36.

See title "*Removal*," divs. I.—XII.

c. Of the Marriage and Evidence in proof of it.

13. An order removing a man and woman as husband and wife is, if unappealed from, conclusive evidence of the fact of marriage as between the two parishes. *Rex v. Berkeswell*, ii. 64. *Rex v. Emborn*, ii. 68. &c.

14. Therefore, where a certificate was given to Richard Burdon and Mary his wife, it was held conclusive evidence as against the certifying parish that she was his wife, although, in fact, Richard Burdon had been previously married to another woman who was then living. *Rex v. Headcorn*, ii. 65.

15. By 26 *Geo. 2. c. 33.* (*the marriage act, which see,*) s. 10. after the solemnization of any marriage under a publication of banns, it shall not be

necessary in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of four weeks as aforesaid, was in the parish or chapelry where the marriage was solemnized: nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

16. By s. 15. from and after the 25th March, 1754, all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and immediately after the celebration of every marriage, an entry thereof shall be made in the register prescribed by s. 14. of this act, (to be kept as ordered by this act,) in which entry or register it shall be expressed, that the said marriage was celebrated by banns or licence, and if both or either of the parties married by licence be under age, with consent of the parents or guardians, as the case shall be; and shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses. (*for the form see the act.*)

17. By s. 16. if any person shall, knowingly and wilfully, insert or cause to be inserted in the register-book of such parish or chapelry, any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or act or assist in falsely making, altering, forging, or counterfeiting, any such entry in such register, or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or assist in falsely making, altering, forging, or counterfeiting, any such licence of marriage as aforesaid; or utter or publish, as true, any such false, altered, forged, or counterfeited register as aforesaid, or a copy thereof; or any such false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited; or if any person shall wilfully destroy, or cause or procure to be destroyed, any register-book of marriages, or any part of such register-book, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall suffer death as a felon, without benefit of clergy.

18. By 21 Geo. 3. c. 53. for rendering valid marriages solemnized in certain churches and public chapels, in which banns had not been usually before August 1st 1781, that registers of such marriages shall be received as evidence of such marriages.

19. By 44 Geo. 3. c. 77. registers of marriages legalized by that act, are to be received in evidence of such marriages.

20. By 48 Geo. 3. c. 127. registers of marriages legalized by that act, are made evidence.

See also 52 Geo. 3. c. 146. for the better preserving and regulating parish registers.

21. The pauper, whose real name was Abraham Langley, was married by banns under the name of George Smith; previously to the marriage he had resided at the place where it was solemnized

about three years, during which time he was known only by the name of Smith; it was held that the marriage was valid, and therefore the wife and children entitled to the husband's settlement. Lord Ellenborough chief justice said, "I think the act only meant to require that the parties should be published by their known and acknowledged names"—"the object of the statute in a publication of banns was to secure notoriety, to apprize all persons of the intention of the parties to contract marriage; and how can that object be better attained than by a publication in the name of which the party is known?—no fraud was imputed." *Rex v. Billinghamurst*, 3. M. & S. 250.

22. The pauper's father, whose real name was Joseph Price, was married by license under the name of Joseph Grew, having changed his name because he had deserted from the army; at the place of his marriage where he had resided sixteen weeks he was known only by the latter name, his wife even did not know his real name till some time after the marriage. The court held clearly that the marriage was valid, the name not having been adopted for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the person to whom he was to be married, but having been previously assumed with quite a different view. *Bayley J.* observed that the sessions were at liberty always to draw the line whether a name be assumed for a fraudulent purpose as it regards the marriage or not. *Rex v. Burton upon Trent*, 3. M. & S. 537.

23. A copy of the register is sufficient evidence of the marriage without proof of the hand-writing; but it is not necessary to produce such copy: the fact of marriage may be established by other means, as by the *vivâ voce* testimony of persons who were present at the ceremony or the marriage dinner; were paid by the parties for ringing, &c. *Rex v. St. Devereux*, 1 Bl. Rep. 367. ii. 66. B. N. P. 27. Phil. Ev. 408. *Morris v. Miller*, ii. 69.

24. Neither is it necessary to prove the publication of banns; but the non-publication may be shown on the other side. *Rex v. St. Devereux*, *ibid.* *Standen v. Stenden*, *Peake*, N. P. C. 32.

25. Indeed so far as a settlement is concerned, it is not incumbent upon the parties to prove a marriage in fact; proof by cohabitation, reputation, and other circumstances, from which marriage may be inferred, being in such case sufficient. *Morris v. Miller*, Burr. 2057. ii. 69. *Rex v. Stockland*, ii. 67. *Leader v. Barry*, Esp. N. P. C. 353.

26. The alleged husband or wife may be called to prove or disprove the fact of marriage; their declarations too are evidence after their death. *Rex v. Bramley*, 6 T. R. 330. ii. 749. *Goodright v. Moss*, Coup. 491. *Rex v. St. Peter's, Worcestershire*, ii. 4. *Henry v. Chesham*, ii. 70.

27. But husband and wife cannot be examined as to the fact of marriage when their answers would criminate themselves. *Rex v. Clieger*, 2 T. R. 263. *Davis v. Dinwoody*, 4 T. R. 678. *Bentley v. Cooke*, 2 T. R. 265, 269.

28. In one instance, too, of an order of removal, where there had been a cohabitation for 30 years, and the sessions refused to allow the husband to be called to disprove the marriage, the court seemed averse to interfere, and the point was abandoned. *Rex v. Stockland*, ii. 67.

29. With respect to a marriage improperly brought about for the sake of fraudulently obtaining a settlement, see *Nol. c. 17. s. 1. n. (7)*, denying that some cases mentioned by Mr. Const, as supporting the doctrine of its being valid so far as the settlement is concerned, decide more than that it is punishable to procure such marriages: and upon examining those cases, the note will be found correct. *Rex v. Tarrant*, ii. 69. i. 338. *Rex v. Edwards*, i. 334. *Rex v. Watson*, 1 Wils. 41. ii. 65.

30. The marriage of legitimate or illegitimate children, under age, without consent of parents or guardians, is void; in the latter case the consent should be given by a guardian appointed by the court of Chancery; the consent of the natural mother is not sufficient. *Chilham v. Preston*, ii. 65. *Rex v. Hodnett*, ii. 73. *Horne v. Liddiard*, 1 *Nol. c. 17. s. 2*. *Priestley v. Hughes*, 11 E. R. 1.

31. Marriages by minors in Scotland, or places beyond the seas, are valid. *Crompton v. Bearcroft*, B. N. P. 113. ii. 70. See *Rex v. Brampton*, 10 E. R. 282.

32. By 15 Geo. 2. c. 30. marriages with persons found lunatics, or with such as are committed to the care of trustees by any act of parliament, until declared of sound mind by the chancellor, are absolutely void.

33. The sentence of an ecclesiastical court, where the suit was instituted to annul a marriage, is conclusive evidence to establish or annul such marriage: but the sentence must be produced. See *Nol. c. 17. s. 2*.

34. Also the sentence of a foreign court, of competent jurisdiction, where the parties are domiciled. *Peake*, N. P. C. 17.

IV. BY RENTING A TENEMENT.

By 13 & 14 Car. 2. c. 12. upon complaint made by the churchwardens or overseers of any parish to any justice, within forty days after any person or persons come to settle in any tenement under the yearly value of 10*l*. any two justices, whereof one to be of the *quorum*, of the division where any person or persons that are likely to be chargeable to the parish, shall come to inhabit, by their warrant may remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.

- a. *Who may or may not so gain a Settlement.*
- b. *Of the kind of Tenement.*
- c. ——— *Term and Occupation.*
- d. ——— *Value.*
- e. ——— *Time for which it must be taken.*
- f. ——— *Residence.*

—————

1. By 8 & 9 W. 3. c. 11. certificated persons may avoid the certificate and gain a new settlement by *bonâ fide* taking a lease of a tenement of the value of 10*l*.*

2. By 23 Geo. 3. c. 23. no prisoner in the King's Bench, or the rules thereof, shall gain a settlement in the parish of St. George the Martyr, in Southwark, by renting a house, part of a house, lodging furnished or unfurnished, or any other premises whatsoever, within the said parish.

3. By 54 Geo. 3. c. 170. s. 4. no prisoner shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, on any civil process, or for any contempt whatsoever.

4. *But see St. Margaret's v. St. Martin's*, (as to the Fleet-prison) *post. Art. 37.*

5. By s. 6. no person or persons shall gain any settlement in any district, parish, township, or hamlet, by reason of any residence in any house or other dwelling-place provided for the residence of such person or persons by any charitable institution, while such person or persons shall be supported and maintained at the expense of such charitable institution, as an object or objects of such charity.

6. By 13 Geo. 3. c. 84. s. 56. no gate-keeper of any turnpike-road,

* See *Rex v. Croft*, *post.* as to the construction of these two statutes.

or person renting the tolls thereof, and residing in any toll-house belonging to the trust, shall thereby gain a settlement in any parish or place whatsoever.

7. By 54 Geo. 3. c. 170. s. 5. no gate-keeper or toll-keeper of any road or navigation, or person renting the tolls and residing in any toll-house of any turnpike road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet.

8. The statutory provision against toll-keepers gaining a settlement, does not extend to the tolls of a bridge, not appearing to be part of the turnpike road. *Res v. Bubwith*, 1 M. & S. 514. *supp.* 123.

9. And where the residence was as servant to the collector, it was held that such person might gain a settlement where he rented a tenement in the parish above the value of 10*l.* per annum. *Res v. Denbigh*, 5 E. R. 333, ii. 113.

10. A person renting and residing in the turnpike-house erected by order of the commissioners appointed by 30 Geo. 3. c. 67, for paving, lighting, and regulating the streets of Durham, and for other local objects, is within the provisions of the general turnpike act, nor can by such means gain a settlement. *Res v. Elcet*, 11 E. R. 93. *supp.* 119.

11. The occupation of the toll-house, and tolls of a bridge demised for a year by five members of a managing committee, under their own seals, but not under the corporation seal, was held not to confer a settlement where the annual value of the toll-house was under 5*l.*, although the annual value of the tolls greatly exceeded 10*l.* The residence in the toll-house, had it been of sufficient value, might have given a settlement, but tolls are not things which lie in tenure, but only in grant; without a deed, therefore, an interest in them could not pass. By Lord Ellenborough. *Res v. North Duffield*, 5 M. & S. 247. *supp.* 254.

12. By 52 Geo. 3. c. 72. no person shall gain a settlement in the parish of Binstead, by residence in any house, lodge, or other building within the forest of Alice Holt, in the county of Southampton.

13. A foreigner (an *alien amy*) though he may not take a lease of a dwelling house or shop, by reason of 32 H. 8. c. 16. yet he may occupy a tenement of 10*l.* a year, and carry on his trade like any other person; then, if he may do so, he has that interest, which enables him to gain a settlement by the provision of the legislature. By Lord Ellenborough, Ch. J. *Res v. Eastbourne*, 4 E. R. 103.

b. Of the kind of Tenement.

14. A water-mill is a tenement within the meaning of the Statute, 13 & 14 Car. 2. *Keelyn v. Rentcomb*, ii. 92. *Salk.* 536.

15. A wind-mill also is a tenement, although there be no dwelling-place either in, or belonging to it. *Res v. Butley*, ii. 25.

16. But not a post wind-mill, constructed upon cross trees laid on brick pillars, but not attached or fixed thereto, which the tenant built and was to take away with him when he quitted, the court saying that this was merely a chattel. *Res v. Londonburgh*, 7 T. R. 577. ii. 140.

17. A coney warren, and a cottage upon it, rented at 10*l.* per year, will give a settlement; for whether the tenant pay the rent for a house to live in, or for a warren which brings him in a profit, is not material. *Kinser v. Stone*, ii. 92.

18. A rabbit-warren, with liberty to kill rabbits for the profit of the occupier, with a small house on it to keep nets in, is a tenement, although it is a contract only to kill rabbits on a particular spot, with liberty to enter on the soil for that purpose. *Res v. Fiddletrentside*, ii. 99. 3 T. R. 775.

19. So renting a piece of pasture-ground is a tenement. *Bartholomew v. Minchin Hampton*, Str. 874. ii. 99, *in notis.*

20. So also the taking the hay-grass and after-math of a meadow, is taking a tenement; for there can be no other profit from the land than the hay-grass and after-math; and if a man grant all the profits of the ground, he grants the land itself: it is all the produce of the soil, and not like taking hay-grass after severance, for that is only a chattel. *Res v. Stoke*, 2 T. R. 451. ii. 98.

21. So also renting the fogs or after-grass of meadow-land is renting a tenement. *Res v. Brampton*, ii. 101.

22. Where a pauper, by order of a corporation made at a common-hall, was allowed the liberty to take sand and gravel from the bed of a river, (of which the corporation were entitled to the soil) for which he paid at the rate of 10*l.* per annum, the court held that he thereby gained a settlement; saying, that he seemed to be in permanency of the profits of the land, that he took all which covered the surface of the land, and that this was as much a tenement as *prima tonsura*. *Res v. All Saints, Derby*, 5 M. & S. 91. *supp.* 254.

23. The renting of a cattlegate in a stinted pasture, on consideration of the tenant keeping in repair three common highway-

the person having a right to the cattlegate was bound is now held to be a tenement; although the tenant had no right to it in respect of any property in the land. *Rex v. T. R.* 137. ii. 97.

It was formerly held, that the renting of land for the purpose of allowing cows to pasture from May-day to Martinmas, by agreement for a certain number of years successively, was not a tenement within these statutes; but that it ought to be the renting of a house or ground to be a tenement. *Rex v. Lindwood*, ii. 99, *notis.*

It was also held, so that the pasture or eatage of a piece of ground was not a tenement. *Rex v. Minchin Hampton*, ii. 99, *notis.*

It was also held, that a dairy, consisting of sixteen cows, with a maid feeding for the said cows on twenty-one acres of clover and thirteen acres of meadow land, with the after-math which were all parts of one farm, also with the run of water belonging to the said messuage, and the washes belonging to the said farm, for the feeding of pigs, and also the run of one cow for the cows aforesaid, for one year, &c. was not a tenement within the meaning of the statutes; because it was an agreement for a personal thing, the use of the cows, and had no connection with the land. *Rex v. Lockerly*, ii. 99, *notis.*

These three last cases have been virtually over-ruled, for it was held, that the renting of a dairy of thirty cows, some at 5*l.* 10*s.* and some at 1*l.* a cow, with liberty to cut furze on an adjoining field, and on other parts of the farm, for the use of the dairy as a tenement. *Rex v. Piddletrenthide*, 3 *T. R.* 772. ii. 99.

It was also held, that renting twenty cows at 3*l.* 10*s.* a-year each, to be depastured in particular fields for a certain part of the year, during which the said cattle was to depasture there, is a tenement. *Rex v. Leake*, ii. 101. 4 *T. R.* 671.

It was, therefore, held, that if a person reside on a tenement of 5*l.* a-year in the parish of *W.*, and, at the same time, rent the ley, or pasture (or pasturage) of two cows, from May-day to Michaelmas, and in *H.*, at six guineas, he thereby gains a settlement in *H.*: for it is nothing more than a common in gross, which is a tenement. *Rex v. Hollington*, 3 *E. R.* 113. ii. 111.

It was also held, that the privilege of milking certain cows of another person so much per week per cow, for forty weeks, which cows were depastured by the owner on his farm, in common with other cattle, and to be milked by the pauper, was held to give

him a settlement, the pasturage of the cows being worth 10*l.* per annum. The court relied upon the words of Lord Kenyon, in *Rex v. Tolpuddle*: "If the cows had been the pauper's own, and he had rented the feeding them, that would unquestionably have been a tenement, and I think that these were the pauper's for a certain period; it was not less the taking of a tenement because the pauper could only enjoy the land in a particular mode." *Rex v. Sale upon Trent*, 10 *E. R.* 496. *supp.* 117.

30. Where the pauper agreed for the milking of a cow for the season, for 9*l.*, and the particular cow was then pointed out, nothing said as to where she was to be fed, except that the farm-servant would tell him the ground on which the cow would be milked, of which he was informed, and always when the pasture was changed; the court held this sufficient evidence of a contract for the taking of a pasture-fed cow, and by consequence of a tenement within the statute, so as to confer a settlement on the pauper, who rented another tenement, which tenements together made up the annual value of 10*l.* *Rex v. Darley Abbey*, 14 *E. R.* 293, *supp.* 120.

31. Again, where a part of a master's agreement with his servant was, that he should have the feeding of two cows, (which he hired) on his master's land, the pauper, by this feeding, which was above the value of 10*l.* gained a settlement. *Rex v. Minster*, 3 *M. & S.* 276. *supp.* 256.

32. But it seems that in all these cases, the annual value of the land, where the cows depasture, should be above 10*l.*, "The principle upon which the renting of dairies has been holden to confer a settlement is, that in truth it is a contract for a certain interest in the land to be enjoyed in a particular manner; that alone constitutes it the taking of a tenement." By *Grose, J.* *Rex v. Minworth*, 2 *E. R.* 198, ii. 110.

33. A contract, it seems, to feed cows generally, under which they might be fed with green tares bought in the market, would not be a tenement. By *Lawrence, J.* in *Rex v. Tisbury*, 2 *Nol.* 17.

34. Land taken for the purpose of growing potatoes for a particular portion of the year, is a tenement. *Rex v. Shenston*, ii. 94.

35. So also renting a right of common in gross, of the value of 10*l.* a-year, is a tenement. *Rex v. Derfingham*, ii. 105.

36. It has been held, that a lease of the fishery of a pond, with the spear-sedge, flags, and rushes in and about the same, is such a constructive demise of the soil, that it is a sufficient tenement to

give a settlement, although the lessor had in fact no title to the premises. *Rex v. Old Abresford*, ii. 97.

37. A house rented within the rules of the Fleet Prison is a tenement, although the tenant be at the same time a prisoner in the custody of the warden of the Fleet. *St. Margaret's, Westminster*, i. *St. Martin's Ludgate*, ii. 93. *Str.* 914.

38. But see 54 *Geo.* 3. c. 170. s. 4. *ante Art.* 3.

39. A first and second floor unfurnished of a house of the value of 40*l.* a-year, to which house there is only one door and one staircase, which are used in common by the pauper and the persons who live in the other parts of the house, is a tenement. *Rex v. St. George's Hanover-square*, ii. 94.

40. So also, a shop at fifteen guineas a-year, being part of a house without any door but that which opens immediately into the street, and having no communication with the other part of the house, is a tenement. *Rex v. St. Giles's*, ii. 95.

41. So also, a room at a victualling-house hired at so much a-week, to be used as an office or place for the justices to meet and transact the parish and other public business in, (the pauper being clerk to the justices), the landlord to furnish the room, to find firing, and to have the room once a fortnight for assemblies, and also at all other times when the pauper did not want it, is a tenement within the statute. *Rex v. Whitechapel*, ii. 96.

42. A land sale colliery, which is a name in coal countries comprehending not the coal mine only, but the stock of horses, gins, ropes, and other things necessary for working the mine, is a tenement, the renting of which will give a settlement. *Rex v. North Bedburn*, ii. 96.

43. But if a man agree with a miller to carry with his own horses and carriages three loads of wheat, at his own costs and charges, weekly, to the mill, to grind the same thereat, and to pay 8*s.* a load grinding for five years; and the miller agree that he shall have the use and liberty of running and grazing for his horses in a particular meadow described in the agreement, and also the use and liberty of the stable during the said five years, the miller, at the expiration thereof, to take back all the utensils of the mill at a fair appraisement, the man never residing in the mill but in a cottage in the same parish which he rented at 3*l.* 18*s.* a-year, this is not such an agreement to take a tenement as will confer a settlement. *Rex v. Hammersmith*, 8 *T. R.* 450. *note.* ii. 104.

44. So also, the renting by a needlemaker, of two out of six pointing places in another's mill, any two of which he was at li-

berty to use from time to time, at 16*l.* a-year rent, and engaging also to do all his landlord's work in preference to that of others, for which he was to be paid by the piece, is not taking a tenement so as to gain a settlement. *Rex v. Dodderhill*, 8 *T. R.* 449. ii. 106.

45. The renting by a needlemaker of certain runners in another's mill, together with a packeting room, of all which he had the exclusive use, (a runner being a piece of machinery for scouring needles, screwed down to the floor of the mill,) the whole being of the annual value of above 10*l.* including the separate value of the runners, is not the taking of a tenement whereby a settlement can be gained. *Rex v. Tardebigg*, 1 *E. R.* 528. ii. 107.

46. A contract for a standing-place in another's mill for a carding machine, (the party's own property) which was fastened to the floor and the roof, for the purpose of being worked by the steam-engine of the mill, for which the party was to give 20*l.* a-year, with liberty to quit on three months' notice, is not a taking of a tenement, but a mere license to use the machinery of the mill; and therefore no settlement can be derived under it. *Rex v. Mellor*, 2 *E. R.* 189. ii. 108.

47. Where a corporation, by verbal agreement with the pauper, leased to him the tolls of a market for above 10*l.* a-year, it was held that he could not gain a settlement thereby, as no interest could pass from a corporation, but under their seal; and therefore he had no more than a mere license to collect the tolls; but if such toll had been leased to him under the seal of the corporation, it seems that he would have gained a settlement by residing for forty days in the same parish where the market was. *Rex v. Chippingnorton*, 1 *E. R.* 239. ii. 112.

48. Renting the tolls of a bridge vested by act of parliament in a company of proprietors, who are declared a corporation, will confer a settlement, although the tolls were made a personal estate, and the renting were not stated to be by deed. *Rex v. Bubwith*, 1 *M. & S.* 514. *supp.* 123.

49. The taking a grant of a licence from the lord of the manor to erect a cottage on a piece of ground, rendering an annual rent of 10*s.* 6*d.* as a quit rent; and also a grant of a license to inclose a piece of land for a garden to the said cottage, both being parts of the waste, and building a cottage thereon, and residing in it a year and a half, were held *not* to confer a settlement.

"A licence is not a grant, but may be recalled immediately; and so might this licence the day after it was granted—the pauper

had a more perfect estate than the licence gave him, that is, mission to occupy." By *Lord Ellenborough, Ch. J. Rex v. don on the Hill*, 4 M. & S. 562. *supp.* 301.

By 59 Geo. 3. c. 50. no person shall acquire a settlement in any or township maintaining its own poor in England, by or by reason or her dwelling for 40 days in any tenement rented by such personless such tenement shall consist of a house or building within such or township, being a separate and distinct dwelling-house or building of land within such parish or township, or of both, *bonâ fide* hired by person at and for the sum of ten pounds a-year at the least, for term of one whole year; nor unless such house or building shall be and such land occupied, and the rent for the same actually paid, for term of one whole year at the least, by the person hiring the same; unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell habit; any thing in any act or acts, or any construction of or implied from any act or acts, or any usage or custom to the contrary in notwithstanding.

The tenement necessary to gain a settlement may consist of several parcels taken at different times, and of different persons. *Nibley v. Wootton Under Edge*, ii. 115.

A house taken for a year at the rent of 3*l.* 10*s.* in one parish, and another house taken for a year at 9*l.* a-year in another parish, was held to give the tenant a settlement in that parish where he resided the last 40 days, although he had tendered the key of the first house to the landlord, and the landlord had refused to accept it. *St. Lawrence v. St. Maurice*, ii. 119. But see *dict.* by *Ch. J. South Sydenham v. Lamerton*, ii. 115.

So a house at 6*l.* a-year, taken from Lady-day to Lady-day, and a meadow of the yearly value of 8*l.* near to the said house, from the end of the May following to Lady-day, at 5*l.* 10*s.* 5*d.*

So also a messuage, rented in the parish of *A.*, a house and land in the parish of *B.* at 7*l.* 10*s.* a-year, whereof so much as was valued at 4*l.* 10*s.* a-year lay in the parish of *A.*, the whole being more than the yearly value of 10*l.*, was a sufficient tenement to give a settlement in *B.* where the house stood, and the pauper resided. *South Sydenham v. Lamerton*, ii. 115.

So where the pauper rented a farm-house and lands of 12*l.* a-year, and had ability to purchase a competent stock for a farm of that value, and had paid rent for the same for two years, and the house and lands lay contiguous to each other, and had been long let together, and occupied by the same tenant; it was held

that he gained a settlement in the parish where the house was, although the whole lay in different parishes, and not to that of 10*l.* a-year in either of the parishes. *Elsted v. Hollis*, 116.

56. So also a house rented at 30*s.* a-year in one parish, and lands taken at a different time in another parish of 12*l.* a-year, gain the tenant a settlement in the parish where he resides. *v. Sandwich*, ii. 117.

57. *A.* contracted with *B.* for a pair of job-horses for a year, at a certain sum, and *B.* with *A.* for the use of a certain less sum a quarter, under which contract he occupied several years; the Court held that this was such a tenancy as would connect with another held by the party, so as to gain a settlement, although *B.* were not rated for the stable. *Margaret's, Fish Street Hill*, ii. 120.

c. Of the Occupation, or coming to settle.

58. Where a pauper took a tenement at 11*l.* a-year, occupied, receiving parish pay for six months after, having agreed to underlet to another a part for 5*l.* a-year, with a guarantee to the landlord the payment of the rent, with which he would not have let to the pauper, but the pauper paid the rent for the first year; it was held that this was a coming to settle within 13 & 14 *Car. 2. c. 12*, upon a tenement of 10*l.* a-year. The sessions found that credit was given by the landlord to the pauper for only 6*l.* a-year, and that for the rest the credit was to the guarantee; for the pauper being the legal tenant of the premises, it is immaterial whether the credit were given to the guarantee or to the pauper. *Rex v. Hooe*, ii. 143. 4 *E. R.* 368.

59. A farm of 52*l.* a-year, rented, occupied, and managed by two tenants, is a tenement to each of them. *Little T. Tew*, ii. 118.

60. So the joint occupation of a farm of 120*l.* a-year, if one of the partners only be the tenant to the landlord, is a tenement to each of them; for, whether the pauper be joint-tenant, or under-tenant to, his partner, he equally gains a settlement. *Rex v. Seamer*, 6 *T. R.* 554. ii. 127. *Rex v. Sissington*, 118.

61. And it was said, in a previous case to the last, that if several persons jointly take a tenement of less annual value than 10*l.* a-year, they do not gain a settlement for either; but a man who takes

10*l.* in yearly value may let part of it to under-tenants, and this will not destroy his settlement, although it will not give one to such under-tenants as pay less than 10*l.* *per annum*. The Court further said that no person, who alone takes a tenement, shall lose his settlement by letting in a joint occupier. *Aure v. Neunham*, ii. 122. *acc. Croft v. Gainsford*, ii. 130. *Marden v. Barham*, ii. 134. *Lland-terras*, ii. 134.

62. A. occupied a tenement of 10*l.* a-year, and died, leaving three children, to two of whom he bequeathed 5*s.* each, and to the latter (whom he made executrix) the residue of his property; the pauper, who had before the death of the testator married the executrix, resided on the tenement above 40 days, and paid rent for it; and this was held to gain him a settlement, though the wife never proved the will. "In order to acquire a settlement by taking a tenement of 10*l.* a-year, it is not absolutely necessary that there should be an express contract; if the tenant reside 40 days on a tenement of such value, with the permission and consent of the landlord, the law will imply a contract." *By Ashurst, J. Rex v. Netherseal*, 4 *T. R.* 258. ii. 126.

63. Where A. occupied a tenement of the value of 10*l.* a-year by leave of the former tenant, upon an agreement to pay the same rent, but without any authority from the landlord, this was held to give a settlement. *Rex v. Aldborough*, ii. 129. 1 *E. R.* 597.

64. Two farms in different parishes held of different landlords, the one of 8*l.* a-year, the other at 2*l.* 10*s.* a-year, is a tenement of 10*l.* a-year, although the farm of 2*l.* 10*s.* a-year were given to the pauper rent free, and out of charity. *Bedworth v. Fillongley*, ii. 123.

65. A house with three acres and two roods of land, at 9*l.* a-year in one parish, and a cottage in another parish at 30*s.* a-year, held in right of the pauper's wife, who was a widow, but had not administered, will gain a settlement in that parish where the pauper resided the last 40 days. *Rex v. Donington*, ii. 121.

66. A cottage of the value of 30*s.* a-year, which a pauper resides in under pretence of purchasing, and land in another parish of 10*l.* a-year, which he entered on at his father's death, is a sufficient tenement to gain a settlement in the parish in which the cottage is situated. *Rex v. Culmstock*, ii. 127. 6 *T. R.* 730.

67. The Court, in the last case, assumed that, under the circumstances, the pauper's possession was legal; for a man, who being insolvent, conveyed his estate to trustees for the payment of his debts, but afterwards, and before the trusts were performed, got

fraudulently into possession of the estate, was held not to be possessed of a sufficient tenement to gain him a settlement. *Rex v. St. Michael's in Bath*, ii. 122.

68. And in no case where the taking is fraudulent, shall any settlement be gained by such renting, however much the annual value may exceed 10*l.* *Ashburton v. Woodland*, 1. T. R. 261. ii. 159.

69. With regard to the occupation of lands in a man's own right, in one case, where the pauper, having a freehold estate in *A.*, which he had let for 50*s. per annum*, rented a tenement in *B.* of the value of 8*l. 8s. per annum*, where he resided 40 days; the Court held that he gained no settlement, saying that this could never be called an occupation of a freehold interest, when there was no occupation in fact, it being leased out to another; and without some occupation the pauper could not gain a settlement. It was also said that the cases on the subject had gone far enough. *Rex v. South Bemflect*, 1 M. & S. 154. *supp.* 126.

70. And now it seems settled that the party must occupy the whole in the character of tenant. Thus, where a person rented and resided on a tenement of 4*l. per annum*, and in the same year bought at a public auction, on August 12th, four lots of growing oats for 12*l. 14s.*, which oats were of different kinds, that ripened at different periods; he began to reap them on September 14th, and continued reaping them as they ripened, and carted them away at intervals between September 14th and November 3d, on which day he carried off the last load. It was held that he did not thereby gain a settlement.

Lord Ellenborough, *Ch. J.* "It appears to me that it has been uniformly adopted as the rule for construing the *stat. of Car. 2.* as much as if the word itself had been inserted in the statute, that the *coming to settle in* means by *renting* or holding in the character of tenant.—I feel no inclination to extend the decisions upon this subject, indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute." *Rex v. Bowness*, 4 M. & S. 210. *supp.* 259.

71. And a pauper, by occupying a freehold estate of his own, and also other lands as tenant, the whole being of the aggregate value of 10*l.*, does not thereby gain a settlement, it being necessary, for this purpose, to hold the whole in capacity of tenant. Lord Ellenborough, *Ch. J.* further said upon this occasion, "What is reported to have fallen from me in *Rex v. Bowness*, is not to be considered as an *obiter dictum*, but as confirmed by the authority of

Lord Kenyon and Mr. Justice Lawrence." *Rex v. St. John, Glastonbury*, 1 B. & A. 481. *supp.* 265.

72. Where a pauper was permitted by several persons, having right of common, to occupy a tenement of 10*l.* a-year, as a reward for his service as a herd; the Court held that he gained a settlement by residence there; saying, that the service of the pauper was equivalent to his paying rent, and that the case stated expressly that he had the exclusive enjoyment of the premises in question, which were worth more than 10*l.* a-year. *Rex v. Melkridge*, 1 T. R. 598. *See Rex v. Minster, ante, Art. 31.*

73. But where a person engaged himself as waiter at an hotel, and had the tap, or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance, and of which he kept the key, and paid for his situation of waiter, and for the tap and cellar 60*l. per annum*, the court refused to quash the order of sessions, determining that no settlement was gained under such circumstances, saying, that there did not appear to be any taking as tenant, but the use of the cellar was only allowed him as a privilege in respect of the principal thing, which was hiring himself as waiter, and before a person could be said to come to settle on a tenement, there must be something like a taking as tenant. *Rex v. Seacroft*, 2 M. & S. 472. *supp.* 256. *But see Rex v. Minster, ante Art. 31.*

74. Again, where the pauper, a married man, agreed to serve for a year as labourer, for which he was to have 20*l. per annum*, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on the neighbouring field, under which agreement the pauper served, and had the exclusive occupation of the house for himself and family, the house being about 100 yards from the house of S., and necessary for the performance of the service, and if he had not had it the pauper would have received more wages; the Court held that this was not a coming to settle so as to confer a settlement, the occupation being the occupation of the master by the servant for the purposes of the service.

And by *Bayley, J.* "I take the distinction, as laid down in *Rex v. Minster*, to be this, that if the occupation be unconnected with the service, it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement." *Rex v. Kelstern*, 5 M. & S. 136. *supp.* 261.

75. A pauper, employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.* which was then purchased by the Board, still continued to reside in part of the premises at a weekly rent of 2*s.* which was deducted out of his wages, and during such last occupation he also occupied a shop, the house and shop together being of the annual value of 10*l.* and upon his dismissal from his employment he gave up possession of his house as required; held that the last occupation of the house was as servant, not as tenant, and that no settlement was gained. *Rex v. Chesham*, 1 *B. & A.* 473. *supp.* 264.

76. A soldier, while his regiment lay in barracks at Brighton, took a house there for himself and family of the annual value of 10*l.* wherein he resided more than 40 days, and the Court held that he thereby gained a settlement, *Lord Ellenborough, Ch. J.* saying, that if this were not so, it might equally well be said that if an estate had devolved upon this soldier by act of law, or he had made a purchase to the amount of 50*l.* no settlement would have been gained by him. *Rex v. Brighton*, 1 *B. & A.* 270. *supp.* 263.

77. But where the husband of the pauper (a soldier) deserted, and left his family in the parish of *S.* and the wife during his absence took a house at 5*l.* per annum in *S.* in which she lived with her family, and also took another at five guineas a-year, and put some of her husband's furniture into it with the intention of removing there (which however she did not, but underlet it); the husband, during the time she held both houses, came to see her, and remained concealed in the house where she lived seven weeks, and was made acquainted with her having taken both houses; the Court held that the residence by the husband under such circumstances did not confer a settlement; saying, that his so coming to the tenement was not in any sense a coming to settle, not a coming *animo residendi*. *Rex v. Ashton under Line*, 4 *M. & S.* 357, *supp.* 260.

78. A labourer coming into a parish for a temporary purpose, and there meeting with an accident by which he is detained there some time, is not such a "coming to settle" as will make him removeable under 13 & 14 *Car. 2.* but he is to be considered as casual poor. *Rex v. St. James, Bury*, 10 *E. R.* 25.

79. The pauper having taken a farm in *A.* for nine years at 26*l.* 5*s.* payable on the 1st of July, was to enter on the arable on

February 14th, and on the dwelling house and rest of the premises on May 13th following; and accordingly entered on the arable, worth 10*l.* a-year, and began to plough and fence, and agreed with the tenant in possession to let him board in the house, where he also slept, at 1*s.* a-day, while he so husbanded the land, and did stay there at different intervals for 16 days in the whole before May 6th, when the tenant gave him up the possession of the house, &c. to which the pauper removed with his wife, family, and goods, who till then had been at a farm house in another parish, where the pauper also had mostly dwelt; and after the 6th of May he only remained in the farm in *A.* for 36 days, when he failed, and applied for relief; and after being kept a day in the poor-house agreed to give up his farm and was removed: the court held that this was a coming to settle upon the tenement in *A.* from the beginning of his lodging with the out-going tenant, which, joined with his residence there after May 6th, made above 40 days in the whole, and settled him there. *Rex v. Calton*, i. 748.

80. For the case of *Rex v. Maghull*, see *Cald.* 429. and 2 *Nol. c.* 23. s. 4. It was not thought necessary to give so long a case here, particularly as the circumstances of it are so very peculiar, "will probably never occur again, and can never be an authority." See *dict* by Lord Mansfield in the case.

81. By 59 *Geo.* 3. c. 50. in order to confer a settlement after July 2d, 1809, the house or building or land (required by that act) shall be held, and the land (required in lieu of or together with such house or building) shall be occupied, and the rent for the same actually paid for the term of one whole year at the least by the person hiring the same.

d. Of the Value of the Tenement.

82. If a man hire a house at a small rent and pay a fine, yet if the house be worth 10*l.* a-year, it makes a settlement; for the settlement depends on the value of the tenement, not on the rent. *South Sydenham v. Lamerton*, ii. 129.

83. And if it be of the value, it is sufficient, though no rent be reserved; and therefore a house and meadow worth 10*l.* a-year, in which a herd, as a reward for his services, is permitted to live, by a number of persons who have a right of common in the place where it is situated, is a tenement, although he pay no rent; for services in this case are equivalent to rent. *Simonburn v. Melkridge*, ii. 140.

84 So where a person rented a farm of 10*l.* a-year in the parish

A. and resided in *B.* rent-free, by the permission of a relation, on a separate tenement worth 35*s.* a-year, he thereby gained a settlement in the parish of *B.* *Rex v. Fritwell*, 7 *T. R.* 197. ii. 153.

85. It is not necessary that the part of the tenement in which the tenant resides should be of the value required; and therefore where a pauper rented a tenement of 13*l.* a-year, but lived in a part of it worth 40*s.* only, it was held sufficient to gain him a settlement. *Llandverras v. Northop*, ii. 134.

86. And if the rent paid be equal to 10*l.* a-year, it is sufficient; and therefore a tenement taken for five months at the gross sum of 4*l.* for the five months, will gain a settlement, although it be something less than 10*l.* a-year, if the sessions find it of that value. *St. Matthew's Bethnal Green v. St. Botolph, Aldgate*, ii. 135.

87. But a tenement of the value of 4*s.* a-week at all times of the year, if let by the week, but not of the value of 10*l.* if let by the year, will not confer a settlement on the occupier: the statute speaking of yearly value, means the value of the tenement to be let by the year. *Rex v. Hellingley*, 10 *E. R.* 41. *supp.* 127.

88. The statutes 8 & 9 *W. 3. c. 11.* and 13 & 14 *Car. 2. c. 12.* are *in pari materia*, and must receive a similar construction; and in construing the words, "*bonâ fide* take a lease of the tenement of the value of 10*l.*," reference must be had to the statute of *Car. 2.* to supply the word yearly; since no case has occurred in which these two statutes have received a different construction as to the nature of the tenement on the taking thereof; on the contrary it has been decided* that a lease at will is a lease within the Certificate Act. By *Abbott, Ch. J. Rex v. Croft*, 3 *B. & A.* 175. *supp.* 267.

89. Where a pauper, in addition to his house and land, had agisted three cows in the field of his landlord for two or three months, but no positive contract for such agistment was proved; the Court held that the sessions might properly infer that this was taking a lease of a tenement within 9 & 10 *W. 3. c. 11.* so as to discharge a certificate, although the value of the tenement, if computed only for the time of the actual occupation, was not sufficient, if added to the lease and land, to make up the annual value of 10*l.*; but the average value of the agistment reckoned by the year added to the value of the other tenements made the whole above 10*l. per annum.* *Rex v. Croft, ibid.* See also *Gratwick v. Shenstone*, ii. 141.

90. And a tenement under the value of 10*l.* a-year, rented from

* *Str.* 502.

year to year, which at any time during the occupation of the pauper becomes of the value of 10*l.* a-year, will gain a settlement, though no alteration be made in the rent. *Rex v. Bilsdale, Kirkham*, ii. 137.

91. Renting a certain number of lugs of land at so much per lug, for the purpose of planting potatoes, where the pauper agreed to take the land ready ploughed and manured, and, when he entered upon it, it was so prepared, was considered a renting of a tenement of a yearly value increased by such ploughing and manuring, although, at the time of actually taking, the ploughing, &c. were not completed. *Rex v. West Cramore*, 2 *M. & S.* 132. *supp.* 124.

92. Again where the annual value of the tenement, in consequence of having been cropped by the landlord with clover and grass seeds, when let to the tenant amounts to 10*l.* but without that would have been of much less yearly value, this will confer a settlement. *Rex v. Purley*, 10 *E. R.* 126. *supp.* 129.

93. Again an acre of land let at 8*l.* from Easter to October for planting potatoes (where the land had been previously dug by the landlord for that purpose, and would not have let for more than half that price had this not been done) was considered to be a tenement of the annual value of 8*l.* although stated in the case to be in a common way worth not more than 2*l.* *per annum.* *Rex v. Ringwood*, 1 *M. & S.* 381. *supp.* 130.

94. But where a house of the value of only 6*l.* 10*s.* a-year was taken at the rent of 10*l.* a-year, under a covenant that the landlord should erect new buildings on the premises, which would have raised the value to the rent, but which buildings were not erected; it was held that this was not a tenement of sufficient value to gain a settlement. *Southwold v. Yokeford*, ii. 131.

95. The rent reserved, all fraud apart, is to be taken as the criterion of the value of the tenement without reference to the payment of the rates and taxes by the landlord; and therefore settling upon a yearly tenement of 10*l.*, the landlord paying rates and taxes, will give the tenant a settlement. *Rex v. St. Paul, Deptford*, 13 *E. R.* 320. *supp.* 128. *acc. Rex v. Framlingham*, ii. 135.

96. If there be no circumstance in the taking which imports the value to be less than the rent, the rent shall be evidence of the value; and therefore where the sessions stated that the pauper had taken a farm at the rent of 10*l.* a-year, but did not explicitly state the real value, or adjudge the taking to be fraudulent, the court

held it sufficient to gain a settlement, although the case added that the farm had been let only for 7*l.* a-year formerly, and that the tenant's stock was not equal to a farm of 10*l.* a-year: the value of the stock, the Court said, was immaterial. *Weston v. Kirtin*, ii. 152. *Kniveton v. Tissington*, ii. 154.

97. The value of the tenement should be exclusive of personal chattels: thus land of the value of 6*l.* 10*s.* a-year, on which the tenant builds a post windmill, and which by agreement with his landlord he was to take away on quitting the premises, was held not to be a tenement of sufficient value, although the mill let for 9*l.* a-year. *Rex v. Londonthorpe*, 6 *T. R.* 377. ii. 140.

98. A thing, however, moveable in itself may be attached to a tenement as an accessory, so as to constitute a part thereof, and go to the heir as a member of the inheritance; in which case the annual value of such things are part of the yearly worth of the tenement, and are to be estimated as such in questions of settlement; such as rabbits in a warren, or fish in a fishery, doves in a dovecote, and perhaps deer in a park. See *Nolan*, c. 23. s. 2. and dict. by Lawrence, J. in *Rex v. Minworth*, 2 *E. R.* 198. and *Co. Lit.* 8. a.

99. Where the sessions find that the amount of the rent paid is more than 10*l.* *per annum*, the court will conclude that the tenement is of that value, although it be stated that some personal chattels are likewise demised, unless the value at which they are rented be expressly stated; as where furniture and firing were found for a room let by the week*; a stock of horses, gins, &c. for working a land-sale colliery were let with it†. See *Nolan*, *ibid.*

100. In case of joint occupation, the value must be such as to allow of each occupying to the amount of 10*l.* yearly. See *ante Art.* 61.

101. If the taking be fraudulent no settlement can be gained under it, whatever be the value of the tenement. *Ashburton v. Woodland*, 1 *T. R.* 261. ii. 139.

e. Of the time for which the Tenement must be taken.

102. It has been held that the tenement needs not be taken for a year; and therefore where land of the value of 10*l.* a-year was

* *Rex v. Whitechapel*, ii. 96.

† *Rex v. North Bedburn*, *ibid.*

taken from Candlemas to Michaelmas, it was held sufficient. *Gratewich v. Shenston*, ii. 141.

103. So where the pauper hired a dwelling-house for five months, which was the remainder of a term which the preceding tenant had in the premises, it was held sufficient, the money paid for five months being equal in value to 10*l.* a-year. *St. Matthew's v. St. Botolph*, ii. 155.

104. So also where the pauper took a farm, consisting of a dwelling-house and several closes and lands, at the yearly rent of 26*l.* and entered on the premises on the 1st or 2d of June, and occupied them until the Lady-day following, and then quitted the same, it was held sufficient; for he was irremovable for above 40 days. *Stanton under Bardon v. Ulcroft*, ii. 149.

105. By 59 Geo. 3. c. 50. no settlement shall be granted by renting a tenement after July 2d, 1819, "unless the tenement shall have been *bonâ fide* hired for the term of one whole year."

f. Of the Residence.

106. The residence must be within the parish where the tenement or part of the tenement lies.

Thus where the pauper rented a windmill in one parish, and resided together with his wife and servant at the house of his father-in-law in another parish, not renting or occupying any tenement there, he gained no settlement by such residence. *Rex v. Knighton*, 2 T. R. 48. ii. 150.

107. And where a person rented a farm of 30*l.* a-year in the parish of *A.* and resided on it from Lady-day 1779 to Christmas 1781, when he went with his wife publicly to reside with his son-in-law in the parish of *B.* taking with him all his furniture and the stock remaining on his farm; and he resided in the parish of *B.* upwards of 40 days before he delivered up the possession of his farm in *A.* but did not hire or occupy any land or tenement whatever in *B.*; it was held that this residence was not sufficient to gain a settlement. *Rex v. Topcraft*, ii. 119.

108. But it is enough if the residence be where part of the tenement lies. Thus where the pauper, who rented two tenements in *S.* went to *F.* where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation where he was permitted to live, but not out of charity, for it appeared that the pauper gave some equivalent although he paid no rent in

money; the Court said, that this was not like the case of *Rex v. Knighton* (where the pauper was a lodger); that here it did not appear that he could be turned out of possession; that being in the occupation of more than 10*l.* a-year in the whole, and some part of it lying in the parish of *F.* he gained a settlement by residence there. *Rex v. Fritwell*, 7 *T. R.* 197. ii. 153.

109. The residence must be for 40 days; and therefore where the pauper had resided only 29 days, although forcibly prevented from continuing in the tenement for the remaining 11 days, this was held not sufficient. *Rex v. Llandedergoch*, ii. 152. 7 *T. R.* 105. *Rex v. Dilwyn*, *Burr. S. C.* 54.

110. So where a pauper, after residing five days in *B.* was arrested and sent to prison in *C.*, and his wife and children resided on the tenement for seven weeks after the arrest, the residence was held not sufficient. *Rex v. St. George the Martyr*, 7 *T. R.* 406. ii. 118.

111. But the court held that a prisoner in the Fleet, who rented a house at 25*l.* a-year within the Rules in which he lived, gained a settlement. *St. Margaret's, Westminster, v. St. Martin's Ludgate*, ii. 95.

112. If a person alternately reside more than 40 days in the whole in each of two parishes, the settlement shall be where he lodged the last night. *Rex v. Lowess*, ii. 148.

113. Where the pauper, having slept 40 nights in *B.* and 40 nights in *S.* during the tenancy, slept the last night but one in *S.* but passed the last night in *R.* packing up his things, but did not go to bed, the Court held this sufficient to settle him in *R.* saying, that they would not enter into minute inquiries whether the pauper slept in the literal sense of the word, and that what would satisfy *pernoctavit* was enough. *Rex v. Ringwood*, 1 *M. & S.* 381. *supp.* 130. n.

114. Where a man had a tenement of above 10*l.* a-year in *A.* in which he generally, and his wife and family constantly resided for several years; but he occasionally slept in *B.* where he had another tenement under 10*l.* a-year, and slept in *B.* more than 40 days, and particularly on the last night when both the tenances expired; his settlement was held to be in *B.* *Rex v. St. Mary, Lambeth*, 8 *T. R.* 240. ii. 155.

115. A tenement of 10*l.* a-year, in which a man's wife and children live, and the lease of which is unexpired, gains them a settlement in the parish in which the tenement is situated, although

he occasionally reside in another place, and do not reside in this tenement the last 40 days previous to the removal of his wife and children. *Rex v. Leeds*, ii. 147.

116. It is of no importance that the part of the tenement upon which the pauper resides is much less than that in the other parish. By *Foster, J. Gratewich v. Shenston*, ii. 141.

117. The relationship of tenant to the property must subsist during the 40 days. The Court held that a residence of 33 days by a widow on a tenement of 10*l.* a-year could not be coupled with a residence on the same tenement with her husband for 16 days preceding. *Rex v. South Lynn*, 5 T. R. 664. ii. 150.

118. For a wife cannot acquire a settlement by residence on a tenement taken by her husband during his life-time; and in the last case her residence as widow was for a period short of 40 days. *Rex v. Aythorp Rooding*, ii. 75. See *Rex v. St. George the Martyr*, 7 T. R. 466. ii. 154.

See *Rex v. Caton*, ante, Art. 82.

For evidence of the value, see ante, Arts. 95, 96.

V. BY ESTATE.

a. Of the Kind of Estate.

1. Generally.
 2. What is or is not a Purchase within 9 Geo. I.
- b. Of the Value.
- c. ——— Residence.
- d. — Certificated Persons.
- e. — Evidence of the Value.

a. Kind of Estate.

1. Generally.

1. An estate for life or of inheritance, though under 10*l.* a-year, will, by a residence thereon of 40 days, give a settlement. *Harrow v. Edgeware*, ii. 457.

2. But, where the pauper's grand-mother had left him an annuity of 10*l.* payable out of her estate, and died possessed of personals to the amount of 32*l.* and an estate for years determinable

on the pauper's mother's death, and the pauper resided there to avoid his creditors, his residence on such estate gained no settlement; the Court saying, that he had only a pecuniary demand, and there was no colour for saying he came to reside on the property as his own. *Rex v. Stockley Pomroy*, ii. 475.

3. An annuity, charged on real estates, to a charity school to be paid to the vicar there for the time being, is not such an interest to the person officiating as schoolmaster as to give a settlement. *Rex v. Melborne*, *Burr. S. C.* 244. But see *Rex v. Owersby Le Moor*, *post*, *Art.* 19.

4. The estate may be in lands held in frank tenure (1), or by copyhold (2). It may be a freehold estate in fee (3), or for life (4); or a copyhold in fee (5), or for life (6); or a leasehold interest determinable on lives (7), or years (8), or from year to year (9).

5. A tenant in common of an estate of inheritance may gain a settlement (10), as also any one of three coparceners (11).

6. So a person having a leasehold interest, although he demise great part of the premises to another; or although the lessor reserve a sleeping-place for himself. *Morsley v. Grandborough*, ii. 459. *Rex v. Marwood*, ii. 464.

7. A mere trustee may gain a settlement by residence in the same parish with the trust estate, since no one can take the estate from him. By *Lord Mansfield*, *Rex v. Stone*, ii. 493.

8. It is not necessary that the pauper should have a beneficial interest in the estate. *Ibid.*

9. The Court will not notice a doubtful equitable estate; and where a pauper married the widow of a man who had paid for, and been let into possession of a freehold cottage, leaving a daughter, but without having had any legal conveyance executed to him in his life time, the Court held, that she was not, nor ever had been, guardian in socage;; and the pauper (her husband) consequently

(1) *Rex v. Charlton*, ii. 480, 8c.—(2) *Harrow v. Edgeware*, ii. 457, 8c.—(3) *Rex v. Charlton*, ii. 480, 8c.—(4) *Rex v. Shenston*, ii. 467.—(5) *Rex v. Stone*, ii. 473.—(6) *Harrow v. Edgeware*, ii. 457, 8c.—(7) *Rex v. Marwood*, ii. 464.—(8) *Mursley v. Grandborough*, ii. 459.—(9) *Rex v. Leeds*, ii. 468.—*Rex v. Stone*.—(10) *Rex v. Nyott's*, *Burr. S. C.* 132.—(11) *Rex v. Dorstone*, 1 E. R. 296.

could not gain a settlement by residence in the parish. *Rex v. Teddington*, 1. B. & A. 560. *supp.* 201. But see *Rex v. Oakley*, *post*, Art. 18.

In the following cases the interest in the estate was held sufficient.

10. Where a man devised an estate to trustees to be sold to pay debts, and to divide the surplus, if any, between A., B., and C.; A. by residing thereon 40 days gained a settlement. *Rex v. Wivelingham*, ii. 476.

11. A father having purchased a tenement for less than 30*l.* devised it in trust to be let to farm during his daughter's life, and to pay her the rents, after deducting the expenses; the court held that by 40 days residence thereon, with permission of the trustee, she gained a settlement. *Rex v. Holm East Waver Quarter*, 16, *E. R.* 127. *supp.* 171.

12. A cottage was leased for 99 years determinable on lives, purchased by the pauper's wife before marriage, and in the life-time of her first husband, conveyed by them to a trustee, in trust that he should by sale or mortgage raise 10*l.* for the benefit of the parish, by whom the family had been before relieved to that amount, interest and charges, and after payment of the same in trust to reassign the premises; the parties always continued in possession, and it did not appear whether the money was ever paid, or what was the value of the cottage; and it was held that on the death of the first husband, the pauper, who married the widow, gained a settlement by residing 40 days in the cottage of which she had retained the possession; for the conveyance amounts to no more than a mortgage; and the mortgagor continued in possession without fraud. *Rex v. Edington*, 1 *E. R.* 288. ii. 496.

13. But where a pauper purchased a leasehold tenement for less than 30*l.* and afterwards conveyed the whole term to one in trust to let the premises, and out of the rents and profits to repay himself 10*l.* advanced thereon, and then to apply the rents and profits to the separate use of the pauper's wife during her life, and afterwards to the pauper's own use for life, if he survived her, and afterwards amongst their children, and the trustee suffered the pauper to continue to reside in the house for above 40 days, until becoming chargeable to the parish, he was removed; it was held that he gained no settlement by such residence; for he had no remaining interest in him at the time, but at most a doubtful and contingent future interest, it being uncertain whether the 10*l.* would be ever paid off,

and even if it were, it would not give him any right to reside upon the premises. *Rex v. Tarrant Launceston*, 3 *E. R.* 226. ii. 499.

14. And if the mortgagee of several houses, after recovering possession in ejectment, permit the mortgagor to inhabit one of them for a particular purpose, the mortgagor gains no settlement by such residence, for he has neither *jus in re* nor *ad rem*. *Rex v. Catherington*, 3 *T.R.* 771. ii. 489.

15. Where an insolvent conveys his estate to trustees for payment of his debts, and afterwards, before the trust is performed, get fraudulently into possession, a residence of 40 days will not gain a settlement. *Rex v. St. Michael's, Bath*, ii. 475.

16. In the two last cases the pauper had nothing in the parish which he could call his own; but where the father of the pauper's wife let a freehold cottage to the parish officers for 1000 years, and they took possession, but subsequently placed the lessor in it with another pauper, and the pauper's wife came to nurse him there, and after the death of her father remained in possession with her husband, who came to reside there under a claim of right, which the overseers, having mislaid the conveyance, could not resist; it was held that the pauper gained a settlement by such residence, no fraud having been found by the sessions, and the court not being at liberty to infer it. *Rex v. Staplegrave*, 2 *B. & A.* 327. *supp.* 305.

17. The mother of an infant copyholder under 14 was held to be guardian by law of the copyhold, there being no custom of the manor for appointing a guardian, and therefore entitled to reside irremoveably on the estate. *Rex v. Wilby*, 2 *M. & S.* 504. *supp.* 299.

18. A guardian in socage residing on the ward's estate for 40 days gains a settlement in the parish, and cannot be removed from the possession of it at any time. *Rex v. Oakley*, 10 *E.R.* 491. *supp.* 166. See *Rex v. Teddington*, *ante*, Art. 9.

19. Where trustees of lands, held in trust to pay 40s. per annum out of the rents to the poor, and the residue to a schoolmaster to be nominated by them, nominate a schoolmaster by an agreement, by which they are to pay him less than such residue; the court held that such appointment, although irregular in its form under the will, was sufficient to give a life interest in the school-house, &c. of which the schoolmaster was put in possession; and, to enable him to gain a settlement by 40 days residence thereon, it was said that he resided in the character of a *cestuique trust*, residing upon what was for the time substantially his own, and that the trustees could not

have removed him. *Res v. Owersby Le Moor*, 15 E. R. 356. pp. 168.

20. Where a pauper, as freeman of the town, was entitled during his residence there, together with the other freemen, to a stinted common of pasture on a neighbouring moor for his own cattle, and so a right to cut peat for his own use, and to get limestones, &c. on the moor; and to put his children to the town school free of expense, at which two of the children were placed at the time of his removal; but it did not appear that he had ever used the common of pasture, or had any cattle with which to exercise it; the court held that these rights did not amount to such an estate as to make him irremoveable. *Res v. Warkworth*, 1 M. & S. 473. pp. 174.

21. If a man build a cottage upon a waste without licence, and after 30 years enjoyment without any molestation from the lord of the manor, it descend to his daughter, she, or, if married, her husband, gains a settlement by residing thereon for 40 days, although it were appear to have been no original grant of the ground on which the cottage was erected. *Ashbottle v. Wyley*, ii. 560.

22. So where a son continued, after the death of his father, 30 years possession of a cottage built on the waste, paying an acknowledgment of 2s. 6d. a-year to the lord, it was held that he thereby gained a settlement, although the possession were not adverse. *Res v. Garway*, ii. 471.

23. Where a man without licence built a cottage on the waste, and lived in it nineteen years and a half without interruption, and a year afterwards was ejected by a mortgagee to whom he had mortgaged it for 15*l.* and then sold it; it was held that he gained a settlement by residing on this estate for 40 days, after he had been in possession of it for 20 years. *Res v. Bitten*, ii. 472. Same point, *ex v. Brungwyn*, ii. 472.

24. So a cottage built on a spot of ground given to the father of the pauper, and which had continued uninterruptedly in the family nearly 20 years, is a sufficient estate to confer a settlement. *Res v. Butterton*, 6 T.R. 554. ii. 495.

25. The grandfather of the pauper gave to the pauper's father a piece of land, upon which the father immediately built a house, and lived there several years; he then let the house, and received rent for it; he afterwards returned to it, and resided there permanently, never having paid any acknowledgment to any one: the pauper lived with his father at the time the house was built, but

about fifteen years afterwards went away, married, and never returned: it was contended, that although the father derived a settlement from this property, yet that it was not communicated to the son, inasmuch as he quitted his father's family before his father's title was perfected by a 20 years' possession; but the court held otherwise, *Dampier, J.* saying, "the subsequent possession legalized the former possession, and shewed that it was of right." *Rex v. Calow, 3 M. & S. 22. supp. 300.*

26. A cottage devised to a son with directions that his father and sister should have free liberty to dwell therein during their lives, is a sufficient estate. *Rex v. Woburn, ii. 474.*

27. An estate belonging to the grandfather of a pauper whose mother on her father's death never reduces it into possession, gives a settlement to her son, who on her death takes the estate in fee but not to her husband, who does not take as tenant by the courtesy. *Rex v. Great Farringdon, 6 T.R. 679. ii. 496.*

28. If a man die possessed of a lease for years, and his next of kin enter and reside upon the demised premises, he does not thereby gain a settlement until 40 days after confirmation of his title by obtaining letters of administration. *South Sydenham v. Lamerton, ii. 462. in notis.* But see *Rex v. Horsley, post, Art. 32.*

29. Therefore where an emancipated son lived with his father in a cottage of the yearly value of 30s. and worked as a day-labourer for himself, of which house his father then and for many years before was possessed for the residue of a term of years determinable on lives, and whereof he died so possessed without a will, and the son, after the death of his father, and having a brother then living, with whom he divided the effects, continued to live on the estate for many years, but did not take out letters of administration until after the lease expired; it was held he did not thereby gain a settlement; for not having taken out administration, his right to the estate never vested, and there was no time during the continuance of the lease that he was 40 days irremovable. *Rex v. Widdoworthy, ii. 461.*

30. So where an estate was demised to A. his executors, administrators, and assigns, for 99 years, if the said A. and B. his wife, and C. his brother, or any or either of them, should so long live; and A. died intestate, leaving B. his wife, and four children; and B. the wife, after a residence of 40 days, sold the remainder of the term, and after such sale took out administration of the estate and effects of her husband; the court held that, as the children were

itled to two-thirds, the widow was not properly, and in the
 of the cases, the sole next of kin; and the whole interest not
 ing in her for her own use, she did not gain a settlement by a
 dence on this estate, as she had not taken out letters of adminis-
 tion to her husband while it continued in her possession. *Rex v.*
th Curry, ii. 477.

1. And where a father died intestate leaving six children, and
 at the time of his death possessed of a tenement for the re-
 mder of a term of 99 years determinable on the death of himself
 his eldest daughter then living, and the daughter took posses-
 sion of the estate, and resided thereon for more than 40 days, but
 her she nor any other person ever administered to the estate and
 cts of her father; the court said, that there is a great difference
 ween a sole next of kin, and where several persons in equal de-
 e have all of them an equal right. *Rex v. Cold Ashton*, ii. 466.
 : see *dict.* by *Ashurst, J.* in *Rex v. North Curry*, "that at most
 re had not been said by the court at any time, even in the case of
 : solely intitled in every sense, than that such case would de-
 ve consideration."

32. In a more recent case the court held, that a settlement
 s gained by sole next of kin, even before administration taken
 t, residing upon a leasehold tenement for years, which descended
 on her from her father, who died intestate (the widow died soon
 or her husband). *Rex v. Horsley*, 8 *E.R.* 405. *supp.* 164. And
 : *dict.* by *Lord Kenyon, Ch. J.* in *Rex v. Offchurch*, that the posi-
 n, that an equitable estate is sufficient to give a settlement
 ears clear from *Rex v. Cold Ashton*, and is confirmed by many
 ier cases, and that there are none in opposition to it.

33. If a widow become possessed of the remainder of a long
 m of years as administratrix of her husband, and demise the pre-
 ses, except "one bay of building with a leaftowe for a habitation
 herself," for years, at a pepper-corn rent, and live in the part of
 : premises so reserved, and marry again; her husband gains a set-
 ment by residing 40 days on this part of the estate. *Mursley v.*
andborough, Str. 97. i. 459. ii. 459. See also *Rex v. Nether-*
e, 4 *T.R.* 258.

34. If a house be vested in trustees to the separate use of a wife,
 th the usual clause that her receipt shall be a discharge to the
 stees for the rents and profits, and that the rents should not be
 bject to the husband's debts; yet the husband gains a settlement

by residing 40 days on this estate. *Rex v. Offchurch*, 3 T.R. 114. ii. 487.

35. So also where the pauper married a woman who was then and had been three years before in possession of a house and garden which had been given to her by deed by a friend who had been owner of the premises for upwards of 30 years before, and in which the pauper and his wife lived for 17 years after their marriage, without paying any rent or being interrupted in the enjoyment of it by the lord of the manor or any other person; it was held that he gained a settlement by residing on this estate. *Rex v. Drury*, ii. 472.

36. A man possessed of a term of years devises the premises and all his other estate, both real and personal, to his son, his heirs, executors, administrators, and assigns, on condition that he pay a certain annuity to his mother, and makes his son sole executor; the son, after probate of the will, gains a settlement by a residence of 40 days on the leasehold premises, although it do not appear that the annuity was paid. *Rex v. Sandrick*, ii. 480.

37. The remainder of a term of years devised to four executors is a sufficient estate to give any of them a settlement who reside in the parish for 40 days, although under 10*l.* a-year; the value in such case is totally immaterial, because, by common law, no person can be removed from his own; and one who has a right to reside irremovably gains a settlement, if he do reside 40 days. *Rex v. Uttoxeter*, ii. 469.

38. And so the executor of tenant from year to year of property under the yearly value of 10*l.* was held to gain a settlement: the court saying, that as to any distinction between tenant from year to year and for term of years, it was more in words than in substance; and *Lawrence, J.* said it was settled in *Rex v. Proctor*, that the administrator of an intestate tenant has the same interest in the land as the intestate; that in the present case the testator had a right to continue on the estate another year, unless notice to quit were given; and of course the pauper, his executor, had the same right. *Rex v. Stone*, 6 T.R. 295. ii. 493.

39. And the circumstance of the executor not having proved the will was considered to be immaterial; and the court cited a case from *Dyer* (367 a.), where a termor devised his term to his executor; and it was held that the term was legally in the executor by his entry and execution of the devise without any probate. *ib.*

1. The son and heir of a tenant by courtesy of an estate of 4*l.* cannot, after his father's death, be removed from such estate. *v. Hasfield*, ii. 462.

2. The widow of a man who dies seised of a house gains a settlement by residing thereon for 40 days in right of her dower. *Rex v. Ainswick*, ii. 474.

3. But not so her second husband and children by him. *ib.*

4. A. purchased a cottage with a small piece of ground for 5*l.* lived in it with his family under a certificate till his death, leaving his widow and four children in the premises, where they afterwards resided for 10 weeks, the eldest son being nineteen years of age, when being seized with the small-pox, the widow became chargeable to the parish; and it was held that the parish was bound to maintain her; for that she was residing irremovably on this estate for more than 40 days, which gave her a settlement in the house. *Rex v. Long Wittenham*, ii. 29.

5. A woman, on her marriage with the copyholder of a manor where the widows were entitled to free bench, gave a bond that the son of her intended husband by a former wife should have possession of the copyhold estate after the death of her husband, on condition of his repairing the part of the house reserved for her, and after the death of her husband delivered up the possession to the widow according to the bond; the son gained a settlement by 40 days residence on this estate. *Rex v. Lopen*, ii. 485. See also the case under *div. c.* of this title.

2. What is or is not an Estate by Purchase within 9 Geo. 1.

1. By 9th Geo. 1. c. 7. s. 5. no person shall gain a settlement by virtue of any purchase of any estate or interest whereof the consideration in such purchase does not amount to the sum of 30*l.* *bonâ fide* paid, for a longer or further time than such person shall inhabit such estate.

2. A grant of a copyhold with 1*s.* fine, 1*s.* heriot, and 1*s.* rent, purchased within 9 Geo. 1. c. 7. s. 5. *Rex v. Warblington*, ii.

3. One who is resident on an estate granted to him for lives for consideration of 2*l.* 2*s.* fine, and 1*s.* rent, cannot be removed from though actually chargeable; but it seems that he cannot gain a settlement by 40 days residence as on his own estate under 9 Geo. 1. c. 7. s. 5. the consideration being under 30*l.* *Rex v. Martin*, ii. 501. See *Rex v. Tarrant Launceston*, *post* Art. 57.

48. In one case, where the father of the pauper surrendered to him a copyhold estate of 25s. a-year, to which he was admitted and lived upon it for a-year; it was held to be a purchase though the party paid no money for it, and therefore that his residence thereon did not gain him a settlement. Every estate, it was said, not acquired by descent was a purchase, and the same construction must be put upon 9 Geo. 1. c. 7. *Rex v. Sawbridgeworth*, ii. 489. in note.

49. But on a subsequent occasion this principle was denied, and the court held that the 9th Geo. 1. did not extend to devises of gifts, or marriage settlements, but was confined to the particular case of purchases for money-considerations under 30*l.* and that the word "purchaser" was not to be taken in its strictly legal sense, but according to the intention of the legislature, which plainly was by this act only to prevent the obtaining of settlements by purchases for small money-considerations. It was determined, therefore, that a conveyance from a father to his daughter, in consideration of natural love and affection, of the residue of a term, was not a purchase within 9th Geo. 1. c. 7. and therefore a residence thereon of 40 days would gain a settlement, although the original consideration by the father was only 20*s.* *Rex v. Marwood*, ii. 464.

50. And again, that a gift to a son in consideration of natural love and affection and of 10*l.* the estate being worth 50*l.* is not a purchase within it. *Rex v. Ufton*, ii. 488. See *Rex v. Ingleton*, ii. 470.

51. A devise is not a purchase within 9 Geo. 1. c. 7.; and therefore if an estate be devised to the wife of a certificate-man for her life, and they enter into and reside upon the same, they thereby gain a settlement. *Rex v. Shenston*, ii. 467. See *Rex v. Woburn*, ante Art. 26.

52. Where there is no custom to the contrary, the lord of a manor cannot make a new grant of copyhold; and if he attempt to do so, the grantee will acquire thereby no settlement by estate.

53. Held also, that a grant by the lord of copyhold land, paying a yearly rent of 2*s.* 6*d.* which rent in a subsequent part was called a quit rent, is a purchase within 9 Geo. 1. c. 7., and being under 30*l.* confers no settlement. *Rex v. Inhabitants of Hornchurch*, 2 B. & A. 189.

54. The remainder of a term purchased for 47*l.* was held sufficient to confer a settlement. *Rex v. Stainfield*, ii. 463.

55. But if *A.* residing on a cottage of his own, grant it by lease and release to *B.* in fee, in consideration of 36*l.* with a proviso "that *A.* shall live and occupy the said cottage with the appurte-

ances, as he theretofore had done and then did, for life," *B.* only takes a remainder after an estate for life in *A.*, and therefore has not such an interest during *A.*'s life as will enable him to gain a settlement by a residence on the estate; for by the word "occupy" in the proviso the whole estate is reserved to *A.* *Rex v. Batington*, 4 *T. R.* 117. ii. 490.

56. Had merely a part of the premises been reserved, however, it seems that a settlement might have been gained. See *Rex v. Marwood*, ii. 464. *Mursley v. Granboro'*, ii. 459.

57. The surrender of an old lease which had been many years in the family, and the taking of a new one, is not a purchase within 9 *Geo.* 1. c. 7. *Rex v. Tarrant Launceston*, ii. 479. pl. 544.

58. A conveyance after marriage by the wife's father to the husband only of an estate under the value of 30*l.* it appearing to be grounded on natural affection, and intended for the use of both husband and wife, is not a purchase within the 9 *Geo.* 1. c. 7. s. 5. *Rex v. Charlton*, ii. 480.

59. An attainted felon, discharged by an order from the Secretary of State under the sign manual, signifying his Majesty's pleasure to grant him an unconditional pardon, and directing his name to be inserted in the next general pardon (of the issuing of which pardon there was some negative evidence), purchased a copyhold for more than 30*l.* to which he was admitted upon surrender formally made, on which he resided, receiving the rents and profits for nine years without impeachment of his title, gained a settlement by such residence for 40 days. *Rex v. Haddenham*, 15 *E. R.* 463. *supp.* 169.

b. Of the Value and Consideration.

60. The sum given for an estate is the true criterion of its value, and if that be under 30*l.* no settlement can be gained in respect of the additional value it may acquire from subsequent improvements. *Rex v. Dunchurch*, ii. 506.

61. If the consideration expressed in the deed of conveyance be as 28*l.* yet parol evidence may be given to shew that the real consideration was to the amount required by the statute. *Rex v. Scammonden*, ii. 510.

62. The mortgagee of a term for 151*l.* to whom 30*s.* were due for interest, and 18*l.* 10*s.* more by bond and simple contract, who, on the death of the mortgagor, takes out administration, as a

principal creditor, and thereby enters and becomes possessed of the estate, gains a settlement by a residence of 40 days. *Rex v. Stockland*, ii. 505.

63. An estate of above 30*l.* though purchased with borrowed money, is sufficient.

64. Thus where a man purchased a house and curtilage for 39*l.* but paid only 9*l.* himself, the remainder being paid for him by a friend to whom he had mortgaged the premises as a security, and who, after the expiration of four years, entered under his mortgage, and turned out the purchaser; this was held to be a purchase of the value of 30*l.*, and to give a settlement, the court saying it would be very hard if they were to inquire whether the purchaser borrowed the money or not. *Rex v. Tedford*, ii. 505.

65. Again, where *A.* agreed to purchase a copyhold estate of *B.* for 60*l.* which was then mortgaged to *C.* for 50*l.* and he paid the 10*l.* and was admitted subject to the mortgage interest in *C.* and afterwards borrowed 50*l.* of *D.* and paid off the mortgage, and then mortgaged the estate to *D.* for the 50*l.*; it was held that *A.* gained a settlement by residing thereon for 40 days. *Rex v. Chailey*, *T.R.* ii. 512.

66. But where *A.* contracted for the purchase of a copyhold estate for 39*l.* mortgaged to another person for 32*l.* and paid 7*l.* and was admitted to the estate subject to the mortgage, he did not gain a settlement by it under 9 *Geo. I. c. 7.* the sum of 30*l.* not being *bonâ fide* paid. *Rex v. Mattingley*, ii. 508. 1 *T. R.* 12.

67. And in a more recent case, where the pauper purchased a tenement for more than 30*l.* the residue of the purchase-money remaining upon mortgage of the premises, and after residing upon such tenement for more than 40 days, sold it to another person, who, on the completion of the purchase, paid the sum due on the mortgage to the original vendor, and the residue of the purchase-money to the pauper, at which time the pauper quitted the tenement, not having resided in it forty days after the payment of such mortgage to the original vendor; the court held that he did not gain a settlement, the consideration of 30*l.* not being *bonâ fide* paid down at the time of the purchase, which was (by *Grose, J.*) said to be necessary to satisfy the statute. *Rex v. Olney*, 1 *M. & S.* 387. *supp.* 173.

68. A copyhold tenement, which, with the fines and fees paid to the court, is of the value of 30*l.* is sufficient within the 9 *Geo. I. c. 7.* to gain a settlement; although the officers of the parish find

money to pay the fine and fees. *St. Paul's Walden v. Kempton*, 70. 138. ii. 504.

69. A lease of 50 years of a cottage, worth 5*l.* a-year, at six-pence a-year rent, upon which the purchaser resides for 25 years, and then sells the remainder of the term for 32*l.* is an estate of sufficient value to gain a settlement. *Rex v. St. Mary, Whitechapel*, . 505.

c. Of the necessary Residence.

70. A residence in any part of the parish in which the estate is situated, is sufficient. *Ryslip v. Harrow*, ii. 513.

71. But a residence, either in the parish or on the estate, is absolutely necessary; for if an estate descend to a person, he cannot be removed to the parish in which it lies, unless he have resided 40 days. *Wokey v. Hinton Blewit*, ii. 513.

72. *A.* was settled and lived at Sowton, but had an estate of his own in Sydbury, in the possession of *B.* as his tenant, and being in distressed circumstances, he left his children at a public-house in Sowton, went to Sydbury, took possession of his estate, and while he lived at a public-house in Sydbury, employed himself in repairing and improving the premises, frequently going backwards and forwards between Sowton and Sydbury, until he had been more than 40 nights in the latter place at different times; but he had no bedding or goods, or stock on the premises, nor paid any rates or taxes, but lodged at the public-house as a guest or traveller; and his was held a sufficient residence to give him a settlement in Sydbury in right of his estate; for it makes no difference whether he was at his own house, or at another person's, or at an ale-house; he had quitted Sowton with a view to make Sydbury his home, and he was 40 days in an irremovable state. *Rex v. Sowton*, . 513.

73. Therefore if a person live in a parish where he has an estate in common with his mother and sisters, he thereby gains a settlement. *Rex v. St. Nyott's*, ii. 514.

74. And where a pauper had a freehold estate in the parish of Sedgfield, which he let to a tenant, and undertook at the same time to sink a cellar and make some repairs in the premises of which the tenant took possession, and opened it as a public-house, but the pauper afterwards went, in pursuance of an agreement, to Sedgfield, for the purpose of making the repairs, and sinking the cellar,

on which work he was occupied for upwards of 40 days, during which time he resided as a lodger to his tenant in the house; and it was held that he thereby gained a settlement in the parish, the estate having come to him by descent, and such residence being equivalent to a residence in any other part of the parish. *Rex v. Houghton le Spring*, ii. 516.

75. So where, during the residence of the pauper in the parish of Blakemere, a freehold estate descended to his wife and her sister, as coparceners, in the same parish, and in a month after the pauper and his wife contracted to sell their share, but the conveyance was not actually executed for more than 40 days after their title accrued, it was held that the pauper was thereby settled in Blackmere, although the estate during all the time were in the occupation of another. *Rex v. Dorstone*, 1 E. R. 296. ii. 523.

76. The residence must be for the full number of 40 days. *Rex v. West Shefford*, ii. 515.

77. But it needs not be a continued residence for 40 successive days. *Rex v. St. Nyott's*.

d. Of Certificated Persons.

78. If a copyhold estate of 20^l. a-year descend to the wife of a certificated man, the certificate is discharged by a residence of 40 days on such estate. *Burclear v. Eastwoodkey*, ii. 525.

79. So if an estate be devised to the wife of a certificated man. *Rex v. Shenston*, ii. 467.

80. A certificated person who resides 40 days on leasehold premises purchased by him, gains a settlement, notwithstanding the statute 9 & 10 W. 3. c. 11; for the estate acquired as well by purchase as descent will avoid a certificate, though under 10^l. a-year. *Rex v. Stansfield*, ii. 526.

81. If a certificated man make a *bonâ fide* purchase of a house for 42^l. and live in it for 40 days, he gains a settlement, although he sell it immediately after the 40 days are expired. *Rex v. Deddington*, ii. 528.

82. A father dies intestate, by which his daughter, married to and living with her husband under a certificate, becomes intitled to a house and land in the certificate-parish for the remainder of a term determinable on her death; the certificate-man gains a settlement by a residence of 40 days on this estate, after being in possession for 20 years, although no administration were ever granted of his father-in-law's effects. *Rex v. Cold Ashton*, ii. 530.

83. A father, in consideration of natural affection, conveys to his daughter, then under a certificate, a customary cottage, with remainder to her children; a residence on this estate will avoid the certificate, for it is not a purchase within 9 Geo. 1. c. 7. *Rex v. Ingleton*, ii. 470.

84. But see *Rex v. Warblington*, ii. 532. 1 T. R. 241. where it was said, by *Buller, J.* that under 9 Geo. 1. the word "purchase" is not so extensive a sense as generally attached to it, but that no case had been then cited where a certificate was held to be discharged by a voluntary gift; that the case of *Rex v. Ingleton* was not argued, but given up under the idea of its being governed by *Rex v. Marwood*, which was not the case of a certificate-man.

85. If a person, formerly settled at A., receive, while living on his own estate in B., a certificate from A., such certificate is discharged by his subsequent residence in B. *Rex v. Upton*, ii. 533. T. R. 251.

See *Rex v. Long Wittenham*, ii. 29.

VII. SETTLEMENT BY OFFICE.

- a. *Of the kind of Office.*
 - b. ——— *Time for which it must be served.*
 - c. ——— *Place in which, and of the Residence.*
-

a. *Of the kind of Office.*

1. By 3 Will. & Mary, c. 11. s. 6. if any person inhabiting any parish shall for himself and on his own account execute any public annual office or charge in the parish during one whole year, he shall thereby gain a settlement.

2. The office needs not be a parish office; it must be a public annual office. *Bisham v. Cook*, ii. 157. *St. Maurice v. St. Mary Calendar*, ii. 158.

3. Every person who serves the parish in such a capacity, must be considered as unlikely to become chargeable; and the true foundation of such settlements is, that the persons to be settled have contributed to the public good by executing those offices. By *Lee, J.* in *St. Maurice v. St. Mary*, *ib.*

4. The office of constable chosen by a leet-jury for the tithing of a parish, and regularly presented to the office at a court-leet, is an annual office, the serving of which for a year will gain a settle-

ment; but it is not sufficient that he is sworn in, there must be a regular presentation. *Rex v. Winterbourn*, ii. 163. See *Wingles v. Sallege*, post. Art. 12.

5. The office of constable of a city consisting of several parishes, and the duties of which office extend in and through all parts of the city, is an annual office, and will gain a settlement in the parish where such officer resides. *St. Maurice v. St. Mary Kildrader*, ii. 152.

6. So the office of petty constable, though served by deputy. *Rex v. Hope Mansell*, ii. 166.

7. So the office of warden of a borough. *St. Mary v. St. Lawrence in Reading*, 15 *Mod.* 10. ii. 152.

8. The office of parish clerk, though appointed by the parson, is an annual office. *Gotton v. Milnick*, Salt. 536. ii. 157.

9. The office of deputy parish clerk is an annual office, although the deputation be made without licence from the ordinary. *Paul v. Bourn*, ii. 152.

10. The office of sexton, to which the party is elected at a vestry by the proprietors of seats in a church or chapel, in the presence of the churchwardens, and on the recommendation of the minister, is an annual office, the serving of which will gain a settlement. *Rex v. Liverpool*, ii. 166.

11. The office of collector of the land-tax is a sufficient office to gain a settlement, for it is not necessary that the office should be a parish office: any office is sufficient, so that, by the notoriety, it may be presumed that the parish had notice of the person's being come into the parish. *Rex v. Hammond*, ii. 157.

12. The office of collector of the duties on births and burials is, therefore, an office, the executing of which will gain a settlement; for its duties oblige the collector to go from house to house in the parish. *Bisham v. Cook*, *ib.*

13. The office of tythingman, appointed by the steward of a leet, although not sworn in until half the year is expired, will gain a settlement. *Holy Trinity v. Garsington*, ii. 158.

14. But not the office of deputy tything-man; "the act means persons who are considerable enough to serve offices for themselves and on their own account." *Rex v. Allcannings*, ii. 164. By *Yates, J.*

15. The office of hog-ringer of a parish, to which the party is appointed for a year at the court-leet of a manor, the duties of which office are to attend the open commons to see that all hogs turned thereupon are rung, and to impound such as are not rung.

receiving one penny for impounding, and sixpence for ringing each hog, is an annual office in the parish, and will gain the party a settlement; not so had he been hog-ringer to certain individuals only. *Rex v. Whittlesea*, ii. 166. 4 T. R. 807.

16. The office of bailiff or ale taster of a borough, to which a person is elected at a court-leet, will gain a settlement. *Rex v. Whitechurch*, i. 163.

17. But where the pauper, at a Michaelmas court-leet held by adjournment for the manor and borough of Chumleigh, on the 16th November 1792, was appointed to the office of ale taster of the borough, and duly sworn according to the custom of the manor to execute the said office for one year next ensuing, or until he should be lawfully discharged from the same, and accordingly entered upon and executed such office until the 1st of November 1793; when, at a similar court holden by adjournment for the said borough, a new officer was appointed in his stead, and sworn in the same manner; it was held insufficient to gain a settlement; for it is not an appointment for a year, from one moveable feast to another, but from one court until it should please the steward to hold another. *Rex v. Bow*, 8 T. R. 445. ii. 175.

18. The office of borsholder of a borough will gain a settlement; but where a certificate-man had a wooden tally left at his house by the preceding borsholder, as a token that he had been chosen, at a court-leet of the manor, borsholder of the borough; yet never having been presented, admitted, or sworn in at the court-leet, it was held that he was not legally placed in the office. *Wingham v. Sellings*, ii. 161.

19. The appointment of a master of a workhouse by the parish officers and vestry pursuant to the statute 9 Geo. 1. c. 7. which enables the parish officers and parishioners, &c. to contract with any person for the management of the poor in the workhouse, (and who did contract with the pauper to manage the poor in the workhouse, and teach the children to spin, &c. at a yearly salary, and, after some years' service, dismissed him at a quarter's notice,) is not a public annual office or charge within 3 Will. & Mary, c. 11. s. 6. the executing of which for a year will confer a settlement. "The question might admit of a different consideration, if any distinction had been established between a public office and a public charge; but I can find no such distinction either in any adjudged case, or in the sense of the statute." By Lord Ellenborough, Ch. J.—"It is clearly no

office, but only an employment arising out of a contract; it would be going a great way to say, that every contract with the parish, for any purpose concerning the parish, was a public charge; the word "charge," coupled as it is in the act with the name of "office," must be taken to mean something of the same kind, although it may not commonly be known under the name of office." By *Lawrence, J. Rex v. Mersham*, 7 T. R. 167. ii. 170.

20. Yet, if the sessions find that the pauper was legally appointed governor of the workhouse at an annual salary, and that the office of governor is a public annual office, and that the pauper served it for a year, he will thereby gain a settlement in the parish. *Rex v. Ilminster*, ii. 167.

21. The office of schoolmaster to a charity school, established by private donation, appointing 10*l.* a-year to be paid to the vicar for the use of the schoolmaster, does not gain a settlement. *Rex v. Milbourn*, ii. 162.

22. The office of curate or sequestrator, until the bishop shall release the vicarage from the sequestration, will not gain a settlement. *Helsington v. Over*, ii. 165.

23. And if a curate officiate in a parish for above a-year under the bishop's licence to perform the office of curate, at a certain annual stipend, yet he is not such an annual officer as thereby to gain a settlement. The statute was evidently intended to be confined to inferior offices, such as constables and the like, known to the parish; and although in some instances the construction had been carried further, yet, *Lord Kenyon* said, he was not inclined to extend it to cases still further from the contemplation of the legislature. *Rex v. Wantage*, 2 E. R. 65. ii. 169.

b. Time for which the Office must be served.

24. The office must be executed for a-year; and, therefore, if the officer, though regularly appointed to the office, become chargeable to the parish before the year expires he cannot gain a settlement as having served the office. *Fittleworth v. Pulborough*, ii. 172. acc. *Rex v. Bow*, ii. 175. And by *Abbott, Ch. J. Rex v. Croft*, 3 B. & A. 171.

25. So also, although the custom of a parish be to serve the office of tythingman for no more than half-a-year under one appointment, yet serving the office for two half years at different times will not make a service for a-year. *Cold Ashton v. Woodchester*, ii. 174.

c. Place where, and Residence.

The office must be executed in, but not necessarily in every of the parish. By *Lee, Ch. J. Fittleworth v. Pulborough*, 2.

If a churchyard lie in two parishes, the sexton gains a set-
t in that where he resides, although no part of the church
ere. *Res v. Liverpool*, 5 T. R. 118. ii. 174.

It seems that there should be a residence in the parish for
ys; but there is no express case deciding this. See 1 *Nol.*
s. 2.

VIII. BY HIRING AND SERVICE.

Who may or may not so gain a Settlement.

Of the Contract of Hiring generally.

1. *Of the Form of, Parties to, and Execution of.*
2. *Nature of.*
3. *For what Time must be made; and herein, of Customary Hirings.*
4. *Of Retrospective Hirings.*
5. — *Conditional Hirings.*
6. — *General Hirings.*
7. — *Special Hirings.*

Of the Service generally.

1. *Of the Nature and Duration of the Service.*
2. — *Connecting Services under different Hirings.*
3. — *Service in different Places.*
4. — *under different Masters.*
5. — *Absence from, and herein of Dissolution and Dis-
pensation.*
6. — *the Residence, and where.*

a. Who may or may not so gain a Settlement.

by 3 W. & M. c. 11. s. 6. if any unmarried person, not having
or children, shall be lawfully hired into any parish or town for one
uch service shall be deemed a good settlement therein, although no
be delivered as required by that act.

A widower, although he have children living, may gain a
nant by hiring and service, provided those children be eman-

cipated, and have gained settlements in their own right; for although the *3 W. & M. c. 11. s. 6.* preclude from a settlement of this kind every person who is married, or has any child or children, yet it only means persons who have wives or children that may become chargeable to the parish in consequence of his settlement. *Anthony v. Cardigan*, ii. 177.

3. And to constitute such an emancipation of a child as to allow of the father so gaining a settlement, it is not sufficient that the child has entered into a contract, which, when completed, will confer a settlement. *Rex v. New Forest*, 5 T. R. 478. ii. 181. *Rex v. Coughenourne*, 10 E. R. 88. *supp.* 115.

4. If a married man agree conditionally to become the servant of another, and between that time and the performance of the condition on which his being hired depends, his wife die without issue, he is an unmarried man at the time of hiring; and by serving a year gains a settlement. *Rex v. Bank Newton*, ii. 179.

5. If a servant be unmarried at the time when he is hired for a year, he gains a settlement by a year's service, although he marry before the service commence, and although his intention to marry be known at the time of hiring. *Rex v. Allendale*, 3 T. R. 381. ii. 180. *Rex v. Stanington*, 3 T. R. 385. ii. 181. n.

6. For marriage after hiring, and during the service, does not vacate the contract. *Farrington v. Witty*, Salk. 527. ii. 295. *Rex v. Clent*, ii. 296. *Rex v. Sulton*, *ib.* *Rex v. Hanbury*, ii. 297.

7. But any fraud as to the period of the marriage, &c. will defeat the settlement. *Rex v. Allendale*, ii. 180.

8. A wife whose husband is abroad may gain a settlement by a hiring before his death, and a continued service under such hiring for a year after his death, although his death were not known until after the year commenced. *Rex v. Hensingham*, Cald. 206. ii. 179.

9. But if a servant marry while serving under a general hiring, the service of such a servant is only good for the current year, for in each succeeding year a new hiring is presumed, and then it seems the disability will attach. *Rex v. St. Giles*, Reading, ii. 297.

10. Therefore, where the pauper was hired at Martinmas, to serve in husbandry for a year at 8*l.* a-year, and married in the middle of the year, and then agreed to serve his master as a hind for a year from that time at 5*s.* a-week, and to live out of the house at another farm belonging to his master, it was held that these two hirings were distinct, and services under them could not be connected so as to give a settlement, because he had not lived a year under the first

hiring, and was a married man when the second hiring took place. *Rex v. Great Chilton*, ii. 268. diss. Lord Kenyon.

11. By 8 & 9 W. 3. c. 11. no person coming into a parish with a certificate shall gain a settlement there by hiring and service.

12. Nor, by 12 Ann. st. 1. c. 18. s. 2. any person hired to or with a certificated person.

13. Nor, by 33 Geo. 3. c. 54. s. 24. any person by hiring and service to or with the certificated member of any benefit society under that act.

14. The son of a certificate person, serving under a hiring for a year in an extra-parochial place, does not gain a settlement; and therefore he cannot be hired as a servant in the certificated parish, so as to gain a settlement there. *Rex v. Collingbourn Ducis*, ii. 181.

15. Although he have previously quitted the certificated parish, served a year in the certifying parish, and part of a year in a third parish, provided he afterwards return to his family in the certificated parish. *Rex v. Ingworth*, 8 T. R. 339. ii. 616.

16. A deserter from his Majesty's service cannot be lawfully hired, as not being *sui juris*. *Rex v. Norton*, 9 E. R. 206. *supp* 155.

17. Nor an apprentice, on the same principle. See by Lord Ellenborough, *Ch. J. ibid*.

18. A person stipulating to be absent one month to attend the militia-training may gain a settlement by hiring and service, since the public has only a claim upon his service for a certain time, and subject to that claim, he may lawfully contract to serve. By Lord Ellenborough, *ibid*. and see *Rex v. Westerleigh*, and *Rex v. Winchcomb*, *post*.

19. Subsequently to the last mentioned cases, the court held that an invalided soldier, who, in pursuance of an order from government, had leave of absence upon agreeing to relinquish his pay for a time, which leave was renewed from time to time by furlough for different periods of three, four, and six months, (which he procured by going to the depôt for them,) did not gain a settlement by hiring and service, not being *sui juris*, so as to be enabled lawfully to contract for his service, although the mistress whom he served for a year obtained the express leave of the commanding officer at the depôt for his so hiring himself, and the soldier received no pay during such time—the officer admitted, however, upon his examination, that he conceived he had the power, at any period of the service, to recall him had the public exigency required it. And Lord Ellenborough, *Ch. J.* said, that there must be an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party

who hires himself has the power of communicating to the master an absolute right to his service during the whole time, and, in order to do this, the servant must be *ad facis* at the time; that the present case fell strictly within the analogy of the apprentice case; and as to the militia cases, the best to be said of them was, that they were exceptions, and his lordship professed that he could not go with them to their full extent. *Res v. Beaulieu*, 5 M. & S. 222. *supp.* 270, decided by Lord Ellenborough, Ch. J. and Le Blanc, J. Bayly, J. diss. and Dampier, J. abs.

20. By 52 Geo. 3. c. 72. s. 8. no person shall by hiring and service, either for the preservation of the woods or plantations, or the game in the forest of Alice Hall in the county of Southampton, gain any settlement in the parish of Binsted in the said county.

21. By 23 Geo. 3. c. 25. s. 1. no person shall gain any settlement in the parish of St. George the Martyr, Southwark, by hiring and service with any prisoners in K. B. or the rules thereof.

22. By 13 Geo. 2. c. 29. s. 7. no servant employed in the Foundling Hospital shall gain any settlement in the parish where such hospital is situated, by virtue of such hiring and service.

23. Nor, by 9 Geo. 3. c. 31. s. 8. any person employed in the Magdalen Hospital as a hired servant.

b. Of the Contract of Hiring generally.

1. Form of, Parties to, and Execution of.

24. The contract may be by word of mouth, written agreement not under seal, or by deed. *Pawlet v. Burnham*, ii. 307. *Res v. Houghton Le Spring*, 2 B. & A. 375. *supp.* 276.

25. It may be made by or with a third person for either of the parties; thus it needs not be made by the master personally*; and on the other hand, it may be entered into by a parent, &c. on the part of the servant; but in all cases it must be subsequently assented to and ratified by the real parties†.

26. With respect to the power of parish officers to hire out parish children, it was said in one case that they had no such power. *Res v. Rickinghall Inferior*, 7 E. R. 573.

27. And, in another case, the court strongly reprobated the practice, by directors of houses of industry, of sending the children out of the houses to the respective parish officers to place out. *Res v. Stowmarket*, 9 E. R. 211. *supp.* 135.

* *Res v. St. Matthew's, Ipswich*, ii. 188. 3 T. R. 449.

† *Res v. Bashall*, 7 E. R. 471. *Res v. Burlach*, 1 M. & S. 370.

28. At all events, if ever this be done by parish officers, the contract must be afterwards distinctly consented to and adopted by the servant; and where the pauper had consented to go into the service, and actually served, conceiving he had no discretion on the subject, the court held that no settlement was gained by such hiring and service. *Rex v. Stowmarket, ib.*

29. And a parish officer may furnish either of the parties with the means to enable him to make a contract. Thus, where a poor boy agreed with a parishioner to go home with him, and do whatever he was bidden, (nothing being said about wages or time, and a subsequent agreement being made,) he gains a settlement by a year's service with such person in *B.*, although the overseer of *A.*, a day or two after such agreement, undertook to find the boy in clothes, for which the master agreed to pay to the overseer a certain weekly sum. *Rex v. Dunton, 15 E. R. 352. supp. 140.*

30. It is not necessary that the person hired should be of full age; nor that the master should have a settlement in the parish. *Rex v. Wincanton, ii. 195.* *Rex v. Dunton, 15 E. R. 352. supp. 140.* *Missenden v. Chesham, ii. 178.*

31. Relationship between the parties is no bar to the validity of the contract. Thus a child may gain a settlement by hiring and service with a parent, &c. *Missenden v. Chesham, ibid.* *Rex v. Chertsey, 2 T. R. 37. ii. 204.*

32. Where the hiring is by deed, it seems not necessary that the instrument should be executed by the master; if the master, knowing the terms by which the servant is bound, (where the servant has executed the deed,) accept his service, then the agreement must be considered binding on him although he have not executed the deed. *Rex v. Houghton Le Spring, 2 B. & A. 375. supp. 276.*

2. The Nature of.

33. The contract must be such as to place the parties in the relation of master and servant, or no settlement can be gained under it. Thus, where a young girl was sent to by a relation, who told her that if she would live with her she should have her meat, drink, washing, and lodging, and the girl, accepting of these terms, lived with her relation for four years; the court held, that in order to gain a settlement under a hiring and service there must be a mutual contract, equally binding on both the parties, but that, in the present case, there was no agreement on the one side to hire, or on the

other to serve; but that it was merely an encouragement to the poor girl, that if she would live with her relation the relation would maintain her. *Gregory Stoke v. Pitminster*, ii. 183.

34. And where a gentleman sent his foot-boy to live with a barber, in order that he might learn the art of shaving and dressing hair, and the barber was to have the benefit of the boy's work; it was held not to be a hiring and service, because there was no contract for that purpose between the boy and the barber. *Rex v. Hamlet of Walton*, ii. 182.

35. So where a son agreed with his step-father to live with him in his house, and to work in his trade of a button-maker, and be paid at the rate of one penny a-gross for the buttons he should make, deducting at the rate of 5s. a-week for his meat, drink, washing, and lodging; it was held that the pauper was not a hired servant for a year, but a workman hired to work by the piece. *Rex v. St. Peter's, Dorchester*, ii. 197.

36. So where the mortgagee of a small estate, on the mortgager's falling under misfortunes, took his son into his family from charity, and gave him his meat, drink, lodging, and clothes for six years, during which time he was employed in running of errands, and doing whatever the servants of the house thought fit to bid him, but no contract was ever made; it was held he did not gain any settlement by such service. *Rex v. Weyhill*, ii. 185.

37. Where a poor girl went to live with her aunt, and during her residence there worked in the day-time with a person in the adjoining parish in the business of burling clothes, for which she was to have so much a-week in winter, and so much in summer, but the employment was continued or discontinued at the end of each week at the pleasure of the parties; it was held that she was a mere day-labourer, and not a yearly servant, for there was no contract to serve, and therefore she was not, as a servant must be, always under the government, discipline, and controul of the master. *Rex v. Wrington*, ii. 184.

38. So also where Captain Howe brought a female negro slave from America to England, where she continued to live with him in the capacity of his servant for several years until he died; after which she was baptized, and continued to live with Mrs. Howe, the widow and executrix of her former master; it was held that she gained no settlement, because there never was any contract to serve as a hired servant. *Rex v. Thames Ditton*, ii. 186.

39. So where a boy of 11 years of age went to live with his uncle a tailor, and worked for him two years, and learned the business, at which time the uncle proposed to take him apprentice, but the boy declined, and continued to work with him as before until he was 17 years of age, the uncle providing him with board, lodging, and necessaries; the court said that a contract was necessary, and therefore he gained no settlement by this service. *Rex v. St. Mary, Guildford*, ii. 187.

40. So where a man went to an inn with the knowledge of the master to assist one of the waiters who was ill, and continued there boarding and lodging 19 months, at the end of which time the waiter went away, and the man continued in his place as he had done before, but without making any agreement with the master; the court held that he gained no settlement by this service; for although not necessary that the hiring should be by the master himself, yet there must be a contract by his authority, and in this case the man went merely as helper to the waiter. *Rex v. St. Matthew, Ipswich*, ii. 188. 3 *T. R.* 449.

41. So where a man who, after living with an uncle upon charity, is hired as a yearly servant by another person, but returns upon a promise of the uncle that if he would come and live with him as before, he would make it better for him than a common service, and that if he continued with him for life, he would leave him his farm and stock, and he accordingly serves his uncle for several years, but receives no wages; he gains no settlement thereby, for there is no contract of hiring between the parties. *Rex v. Stokesley*, 6 *T. R.* 757. ii. 190.

42. So where a pauper was placed by the parish with a parishioner, upon an agreement between the latter and the parish-officers to find board, washing, and lodging for the pauper at 2s. 6d. a-week, and that the pauper was to do what he was set about, it was held that it does not constitute the relation of master and servant between such parishioner and the pauper, so as to enable the latter to gain a settlement by hiring and service.—Neither does such a relation arise by implication from a continuance of services by the pauper to the parishioner, living with him as before, after the parish had refused any longer to continue parochial relief; and the pauper (who was a Greenwich pensioner) going there twice a-year without asking or receiving the leave of the parishioner, the latter, however, not refusing leave when informed of the others going. *Rex v. Rickingham*, i. 716. 7 *E. R.* 373.

43. A poor boy, allotted by parish-officers to a parishioner, who handed him over to another person, by whom the boy was told that he was to stay with him a year, to which he made no objection, conceiving that he had no discretion on the subject, but entered into no contract with respect to wages or the nature or duration of his service, was held clearly to gain no settlement by service under such supposed obligation for a year. *Rex v. Stowmarket*, 9 E. R. 211. *supp.* 135. See *Rex v. Dunton*, *ante* Art. 29.

44. A defective contract of apprenticeship will not enure as a hiring for a year. See *Peterchurch v. Allsaints*, ii. 370. *Rex v. Highnam*, ii. 371. *Rex v. Whitchurch Canoncorum*, ii. 368. And title "Settlement by Apprenticeship."

45. But a regular hiring is not done away with by a subsequent invalid contract between the parties, even if it be evident that their intention was to form thereby the relation of master and apprentice. *Rex v. Shinfield*, 14 E. R. 541. *supp.* 152.*

3. For what time must be made; and of customary Hirings.

46. The hiring must be for a year's prospective service. Thus a hiring for two successive periods of 11 months will not give a settlement. *Rex v. Houghton*, Str. 83. ii. 252.

47. Nor for two successive half-years. *Dunsford v. Ridgwick*, Salk. 535. ii. 250.

48. Nor from May-tide to Lady-day, and a new agreement at Lady-day to serve till the May-tide ensuing. *Horsham v. Shipley*, Fo. 134. ii. 235.

49. So where the pauper was hired on the 3d of October, to serve from that day until the Michaelmas-day then next ensuing, it was held not a hiring for a year, although in fact he served so long after Michaelmas-day as brought the year about. *Pepperharrow v. Frencham*, ii. 235.

50. So also where a statute had been immemorially held for the hiring of servants on the first Thursday after Martinmas, and the pauper was hired at such statute to serve till the Martinmas then next ensuing; it was held not to be a hiring for a year. *Rex v. Newton*, ii. 235.

51. So a hiring from Martinmas to Whitsuntide, and from Whitsuntide to Martinmas successively, is not a sufficient hiring to gain a settlement, although it be the custom of the place to consider it as a hiring for a year. *Rex v. Lowther*, ii. 238.

* See further div. "General Hiring," post. 6.

52. So also where there was a custom for servants to hire by the year at two different statutes, the one held on the Friday before Old Martinmas-day, and the other on the Friday next after Old Martinmas-day, and the pauper was hired on the Friday next after Old Martinmas-day to serve to the Old Martinmas-day following, and which, by the custom of the country, was considered as a hiring for a year; yet this is not such a hiring for a year as will gain a settlement; for the act of parliament which requires the hiring to be for a year cannot be controuled by the custom of the country. *Rex v. Harwood*, ii. 241. See *South Cerney v. Coultsbourn*, ii. 244. *post*. 66.

53. So also where the pauper, on Saturday 13th October 1787, being three days after Old Michaelmas-day, which happened on a Wednesday, was hired to serve until the next Michaelmas, and he continued in the service until Saturday 11th October, 1788, being the day after Old Michaelmas-day, which (it being Leap-year) happened on a Friday; the court were clearly of opinion that this was no hiring for a year, although by counting the number of days they make 365; for the contract was to serve from three days after Michaelmas until the Michaelmas following. *Rex v. Ackley*, 3 T. R. 150. ii. 242.

54. But it was held in one case that a hiring from Whitsuntide to Whitsuntide, such hiring being intended for a year, and so considered by the custom of the country, is a good hiring for a year, although it fall short of 365 days. *Rex v. Newstead*, ii. 237.

55. The authority of this case however, has been doubted. See *Rex v. Bow*, 8 T. R. 445. ii. 175.

56. Where a statute fair was held yearly on the day after Old Michaelmas, except when Old Michaelmas fell on a Saturday, and then the fair was held on the Monday; the court held that a hiring from such Monday till Old Michaelmas-day following was not a yearly hiring under which a settlement could be gained; and the court expressed an opinion against such constructive hirings. *Rex v. Standon*, 10 E. R. 576. *supp*. 138.

57. But, under certain circumstances, a contract may be presumed; as if a servant in husbandry serve a year, it is strong presumptive evidence that he served under a contract of hiring for a year. *Rex v. Lyth*, ii. 455.

58. So if a servant live three years in service with the same master, it is presumptive evidence of a contract of hiring for a year, although at first the servant were only hired for part of a year. *Rex v. Long Whatton*, ii. 356.

59. Where a pauper had served a master, under unstamped articles of agreement to work with him for three years at certain rates of weekly wages, and under certain covenants, after which he had continued to serve his master for four years longer without coming to any new agreement; held that a hiring for a year might be presumed. *Rex v. Pendleton*, 15 E. R. 449. *supp.* 38.

60. And where it was proved that a pauper had served as ostler in A., and had been heard to say that he was settled there; this was held sufficient in the absence of all other evidence, the pauper being supposed dead, to warrant the sessions in presuming that he was regularly hired for a year. *Rex v. Holy Trinity, Cald.* 141. ii. 352.

61. Where a servant, after serving a year, part of which is under a retrospective hiring, continues in service another year, a contract of hiring for a year may be presumed. *Rex v. Hales*, ii. 357.

62. But where a female natural child was hired for a year by the wife of its reputed father, and continued doing the household work for three years, but after the first year no wages were paid, nor was there any contract of hiring, held that the sessions were warranted in finding that, after the expiration of the first year, she did not continue on the terms of the original hiring. *Rex v. Sov*, 1 B. & A. 178. *supp.* 277.

62. An unmarried man agreed, on October 17, to serve a master for the year at 9s. 6d. a-week, and received those wages till October 13, 1804, three or four days previous to which (having in the mean time married) he agreed to serve his master for another year, at 10s. a-week, which sum he received on the 20th of October, and served more than a-year afterwards; the court held that this was evidence from which the sessions might draw the conclusion that the original hiring was for a year, and not merely for the current year of 1803, and that there was a sufficient service coupled with such hiring to gain a settlement. *Rex v. Overnorton*, 15 E. R. 347. *supp.* 139.

4. Of Retrospective Hirings.

64. A retrospective hiring, as where Michaelmas-day was on a Thursday, and upon the Saturday following, a man was hired "from the said Thursday after Michaelmas-day to the Michaelmas-day following," is not a sufficient hiring to gain a settlement. *Coom v. Westwoodhey*, ii. 243.

65. If a person be hired from six weeks after Michaelmas to serve until the Michaelmas following, and before the time expires he offer to live with his master for a year from that Michaelmas-day, but, this offer not being accepted, he go away on Michaelmas-day, and three days afterwards the master assents, and the servant enters immediately on the service and serves out the year, yet he gains no settlement, for it is a retrospective hiring. *Rex v. Westwell*, ii. 244.

66. So also if there be a custom to hire for a year on a day after Michaelmas, and a servant be hired on that day to serve from the preceding Michaelmas-day until the Michaelmas-day then next following; this is a retrospective hiring, notwithstanding the custom of the country. *South Cerney v. Coultbourne*, ii. 244.

67. For there must be, by some means or other, a hiring for a year, and a service for a year, to give a servant a settlement; but if the retrospection be fraudulent, as if a master were to hire a servant three days after Michaelmas to serve till the Michaelmas following, with a private agreement for the servant to give in three days after that time, that would be construed a hiring for a year. *Rex v. Mursley*, ii. 246.

68. If a servant go into a place upon liking, and, after he has lived eight weeks in the place, his master hire him for a year, to commence from the beginning of the said eight weeks, this is a retrospective hiring. *Rex v. Ilam*, ii. 245.

69. So where the pauper, five days after Michaelmas-day, went into a place and stayed a month upon liking, without any terms being talked of, at the expiration of which time her aunt came and let her for a whole year, to commence from the day she first went into the service; it was held that the girl gained no settlement by serving the year, because it was a retrospective hiring. *Rex v. Hoddesden*, ii. 245, *in notis. acc.* *Rex v. Marton*, 4 T. R. 257.

5. Of Conditional Hirings.

70. A conditional hiring, as for a quarter of a year, and, if the master and servant like one other, to continue for a year, is, if service for a year ensue, a good hiring to gain a settlement. *Rex v. Lidney*, ii. 247.

71. So an agreement to go into service a month upon liking, and to have 5*l.* a-year wages, or a month's warning, to be at any time paid or given on either side, is a good conditional hiring, and,

a service for a year under it, will gain a settlement. *Rex v. New Windsor*, ii. 248.

72. So a hiring for one year at 4*l.* wages, payable quarterly, under an agreement made at the time of the hiring, that either the miller or servant should be loose from or at liberty to determine the said contract or hiring at the end of any quarter of the said year, either of them giving a month's notice to the other, is, if no such notice be given, a good hiring for a year; and service for a year under it will gain a settlement. *Rex v. Atherton*, ii. 249.

73. So where a servant out of place went to a master, and asked him what he would give; the master replied he would not give him more than he gave his former boy, which was 20*s.* a-year, and accordingly the master hired him in this manner; he was to go into the place for a quarter, and to have after the rate of 20*s.* a-year, and if he and his master liked each other, he was to continue on, and he continued a year and a half over and above the said quarter, without any further or other hiring, this was held a good conditional hiring. *Rex v. St. Ebb's*, ii. 249.

6. Of General Hirings.

74. But if there be a contract of hiring, although it be general, yet that is sufficient; for it shall, in such case, be construed to be a hiring for a year. *Wandsworth v. Putney*, ii. 191.

75. Therefore, where a boy of fourteen years of age went, without any contract, to live with a gentleman, and about two months afterwards the master told him that if he stayed a year and behaved himself well, he would, the next year, give him full livery and wages, and the boy resided with him sixteen months afterwards, and received on his going away a guinea and a half from his master's partner; the court seemed to think that this was a sufficient general hiring. *ib.*

76. So also where a master agreed to give a boy meat, drink, and washing, lodging, and clothes when he wanted, and the boy continued to serve under this agreement for two years and a half; the court thought this a general hiring for a year, although no particular time were agreed on, and the boy apprehended that his master might turn him off, or that he was at liberty to go away from him at pleasure. *Rex v. Wincaunton*, ii. 195.

77. So where a man happening to meet the head keeper of Rushmore Lodge in Cranbourn Chase, who had then parted with

one Edward Hill, who had been for many years one of the keeper's servants, or under-keepers, and the head-keeper said to him, "Do you like the life of a keeper?" and being answered in the affirmative, said further, "then go into Ned Hill's place, and you shall want no encouragement; I will give you a suit of clothes directly;" his was held a sufficient hiring for a year. *Rex v. Berwick St. John*, L. 196.

78. So also where a boy went into an inn yard, and asked the master whether he wanted a boot-catcher and driver, for that if he did he was willing to serve him; and upon which the master bid him go into the yard, and look after the horses; and on his going into the service was only found in meat, drink, and lodging, but received no wages; this was held to be a general hiring, and, consequently, unless the contrary be proved, a hiring for a year. *Rex v. Stockbridge*, ii. 199.

79. So also, where a barber of Bath Easton went to seek for work as a journeyman, and offered his services to a barber at Devizes, who agreed to give him meat, drink, and lodging, as his journeyman, and, in lieu of wages, he was to have the Christmas-boxes, and he accepted these terms, but no particular or specific time was stipulated for his staying in the service; this was held a general hiring. *Rex v. Bath Easton*, ii. 201.

80. So also where a man agreed with an innkeeper, "that the innkeeper should give him one shilling a-week, as he had given other men, and the vails of the stables," but nothing was then said as to the time of service; but at the end of the year his mistress said to him, "You have been here a year, I will pay you;" to which he answered, "It is no matter, I may stay with you another year;" and his mistress replied, "Very well, Sampson;" this was held a good general hiring for a year, though at weekly wages, and though the servant apprehended that his master might have parted with him at any time on giving him reasonable notice; for neither the payment of the wages weekly, nor the apprehension of the servant, makes any difference. *Rex v. Seaton and Beer*, ii. 202.

81. So also where a man, on the death of his wife, went to his daughter who was in service, and applied to her to come and live with him, and do the offices of a servant for a year, and offered her food and lodging, and such profits as she could make by keeping swine, and what she could earn by her own labour, and that if it did not produce as much as she got in the place she was then in,

he would make up the difference; it was held a good hiring for a year. *Rex v. Chertsey*, 2 T. R. 37. ii. 204.

82. So where a man was hired to a button-maker for eleven months, at ten guineas wages, and, at the end of the eleven months, the master paid him the wages, and gave him half-a-guinea over, and said, "You have been a good servant, you may as well stay on an end in your place; the place suits you, and you suit the place;" and the man answered, "Very well, sir, I have no objection:" this second hiring was held a good general hiring for a year. *Rex v. Macclesfield*, 3 T. R. 76. ii. 206.

83. If a person meet a servant in place, and ask her whether her master had hired her again, and upon her replying in the negative, desire her to come and live with him, and take care of his child, this is a general hiring. *Rex v. Worfield*, 5 T. R. 306. ii. 208.

84. "A general hiring, without limitation of time, is presumed to be a hiring for a year; but, like all other presumptions, it is to be explained by circumstances, and holds good only till the contrary be shewn. Whenever an intent appears to hire for a less time, this destroys the presumption." By Lord Mansfield, *Ch. J. in Rex v. Elstack*, ii. 203.

85. Thus where a servant hired herself, at weekly wages, for so long time as her master should want a servant; this was held not to be a general hiring for a year. *Ibid.*

86. Nor where the hiring was at 3s. a-week, for so long time as she and her master could agree. *Rex v. Mitcham*, 12 E. R. 331. *supp.* 138.

87. Where a pauper went to the house of an innkeeper, and agreed to live with him as ostler at 4s. 6d. a-week, and continued more than a year in the service; but, on his departure, the publican told him, that, as he had received vails, 4s. 6d. a-week was too much, and the pauper agreed to accept after the rate of 10d. a-year, in lieu of the 4s. 6d. a-week, this was held a good hiring for a year; for if there be any thing in the contract to shew that the hiring was intended for a year, there a reservation of weekly wages will not controul that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring. *Rex v. Newton Toney*, 2 T. R. 453. ii. 225.

88. But a hiring, at 3s. 6d. a-week, with meat, drink, washing,

and lodging, and to part on a week's notice by either party, is not such a hiring as will confer a settlement; for it is not a hiring for a year. *Rex v. Hanbury*, ii. 231. 2 *E. R.* 423.

89. And, therefore, where the pauper went to live with a livery stable-keeper and postchaise letter as under-ostler, at 9s. a-week, without fixing any time for the expiration of such service, and some time afterwards, on a postboy going away, the pauper was turned over into his place, at 3s. a-week and the driving perquisites, to find himself in victuals, and lodge in a loft in the stable-yard; the court held that this was not a good hiring for a year. *Rex v. Odiham*, ii. 225, *in notis*.

90. So where nothing is said in a contract of hiring about time, but a reservation of weekly wages, it is a weekly hiring only; and, therefore, where the contract was for the servant to live with his master, the latter finding him board and lodging, and paying him 2s. 6d. a-week, it was held that no settlement could be gained. *Rex v. Pucklechurch*, ii. 233.

91. But where the pauper was hired at 3s. a-week the year round, each to be at liberty on a fortnight's notice, but the servant not to go away at seed-time, hay-making, or harvest; it was held a hiring for a year; for a hiring for a week at a fortnight's notice is repugnant. *Rex v. Birdbroke*, ii. 226.

92. A hiring at 3s. 9d. a-week, with liberty to part at a month's notice, is a general hiring: "Wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, then the hiring must be understood to be for a year." By *Lord Kenyon*, *Rex v. Hampreston*, 5 *T. R.* 295. ii. 207.

93. So a hiring at weekly wages, with liberty to either party to separate at a month's notice, was held to be a yearly hiring, although the case stated that the pauper hired himself by the week, also stating, however, that, at the time of the hiring, nothing passed about hiring by the week, further than that the pauper was to have weekly wages. *Rex v. Great Yarmouth*, 5 *M. & S.* 114. *supp.* 281.

94. But if a man agree to live with another for 2s. 6d. a-week, and to part at a fortnight's or month's notice, and receive his wages sometimes at the end of a week, sometimes at the end of a fortnight, and sometimes of a longer time, as he wants money, this is not a general hiring, for the servant is under no obligation to serve for a year. *Rex v. Bradninch*, ii. 199.

95. So where a journeyman-miller let himself by the month, at

the wages of 8s. a month, with liberty to depart at a month's wages or a month's warning, but that if he continued in the service till harvest-time, he should be at liberty during harvest month to let himself to any person he chose for the harvest month, and he let himself accordingly for the harvest, received his 8s. a-week from his mistress, and paid her a moiety of his earnings; it was held not a general hiring for a year. *Rex v. Clare*, ii. 200.

96. A hiring at 8s. per week, and two guineas for the harvest, to do any thing the gardener should set him about, was held not to be a yearly hiring: "All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest." By *Lord Ellenborough*, *Rex v. Lambeth*, 4 M. & S. 315. *supp.* 280.

97. And so where the pauper hired himself as a servant in husbandry, at the weekly wages of 4s. board, washing, and lodging, except in the harvest-month, when his wages were to be 10s. 6d. a-week; the court held this to be only a weekly hiring. *Rex v. Dodderhill in Wyck otherwise Droitwich*, 3 M. & S. 243. *supp.* 279.

98. Where a boy, who, from the age of six to sixteen, was employed by his father-in-law in his trade of a button-maker, the father-in-law taking all the profits of his labour, without any other compensation than maintenance, and such pocket-money as his father-in-law thought fit to allow, at the age of sixteen insisted on a larger allowance for his labour, and the father-in-law agreed that he should live in the house and work as before, and be paid at the rate of one penny a gross for the buttons he should make, being the same as he paid other workmen, deducting at the rate of 5s. a-week for his board, washing, and lodging; the Court held that this was not a general hiring, being merely the case of a workman hired to work by the piece. *Rex v. St. Peter's, Dorchester*, ii. 197. But see *Rex v. Alton*, *Rex v. Birmingham*, and *Rex v. King's Norton*, *post.*

99. And where the pauper agreed to serve as a brick-maker from Michaelmas to Michaelmas, and make 70,000 bricks at a stipulated price, the court held this not to be a contract for a year's service, but only till a particular job were completed, and that no settlement was gained under it. *Rex v. Woodhurst*, 1 B. & A. 393.

100. Where a plumber and glazier let himself to a master in that business at the wages of 6s. a-week, board, lodging, and washing, summer and winter, and on his going to sleep out of the house demanded 6d. a-week more, it was held a hiring at so much a-week,

not a yearly hiring; for the words "summer and winter" only ported that the wages were to continue the same, and not be ed according to the season, and not that the contract was to tinue during the whole year. *Rex v. Dedham*, ii. 198.

7. *Of special Hirings.*

Miscellaneous.

Where the Servant is to learn of the Master.

Of Exceptions at the time of the Contract, stipulating for Absence :

Express.

Implied or Customary.

101. If a person be hired for a year, to spin wick yarn at 1s. 6d. a stone, and provide herself with meat, drink, washing, and lodging where she pleases, this is a special ing for a year, and service for a year under it will confer a set- tlement, although the servant intended by the nature of the con- t of working at so much a stone to be at liberty to work for other master. *Rex v. King's Norton*, ii. 209.

102. The pauper hired himself to a turner for a year, and was ound in board, lodging, pocket-money, and clothes, by his ter, and his master to have the benefit of his work; but when onths of the service under this hiring had expired, they came new agreement, by which the pauper was to work by the e, and to be paid by the piece for what he should earn, and to himself in board, lodging, pocket-money, and clothes; and it held that a settlement was gained under this hiring. *Rex v. as*, ii. 222. But see *ante*, *Rex v. St. Peter's, Dorchester*, and *v. Woodhurst*. *Arts.* 98, 99.

103. Where a pauper was hired at Martinmas to serve in hus- try for a year, and, in the middle of the year, married, and e days before the 1st of May, he and his master agreed that he his wife should go as a hind to reside on and manage another belonging to the master in the same township, and should year from May-day receive 5s. a-week, have the house to in rent-free, and some other trifling and customary perquisites, court held that the second agreement was a dissolution of the contract, and that no settlement was gained. *Ashurst, J.* ob-

served, that this was very distinguishable from *Rex v. Allen*, where the principal alteration was in the terms of the contract respecting wages; and *Greer, J.* relied strongly upon there being, in the present case, an alteration in the term of service. *Rex v. Great Aton*, ii. 260. 5 T. R. 672. *dis. Lord Kenyon.*

104. A hiring for a year to make screws at so much per gun "good earn, good hire," will confer a settlement. *Rex v. Birmingham*, ii. 217.

105. So a hiring for eleven months for 4*l.* 10*s.* and an agreement that the servant should give the master a month's service in, beyond the eleven months, is a hiring for a year; for it is nothing more than whether eleven months and one month make twelve months. *Rex v. Milwich*, ii. 210.

106. If *A.* club with *B.* for three years, (which signifies one person contracting to serve another for the purpose of being taught some art or trade,) and also agree to do any work that *B.* sets him about, it is a good particular hiring for a year. *Rex v. Coltishall*, ii. 228.

107. So if a man let himself for one year to a carpenter, under an agreement to receive no wages, but his master to teach him the trade during the said year, and to provide him with meat, drink, washing, and lodging, this is a hiring for a year. *Rex v. Hitcham*, ii. 213.

108. So where the pauper went to a weaver, and asked him if he would teach him to weave counterpanes, to which the weaver replied, that he would teach him if he would work with him two years and a half or three years, and the pauper assenting to this proposal, it was agreed that he should find him clothes, and that his earnings should be divided between them, the court held this a good hiring for a year. *Rex v. Little Bolton*, Cald. 367. ii. 222.

109. But although *Lord Mansfield* in delivering the judgment on the above case said, that the agreement did not speak of the pauper as an apprentice, and therefore it was a good hiring as a servant, yet it is not to be intended that every such agreement is to be considered as a contract of hiring and service wherein the specific term "apprentice" is not used; for the contract must depend on the intention of the parties, to be collected from the whole of the agreement. *Rex v. Laindon*, 8 T. R. 379. ii. 378. See also *Rex v. Highnam*, ii. 371. and *Rex v. Rainham*, ii. 383. post title "Settlement by Apprenticeship."

110. The father of the pauper contracted with *J. S.* that his son should be with him, and should work with him for two years and have what he got, and should allow 2s. per week to *J. S.* viz. 1s. for teaching him the business of a frame-knitter, 9d. for the rent of a frame, and 3d. for the standing; held that this was a contract of hiring and service, and not an apprenticeship, and that the son's having worked under it was evidence that he had adopted the contract made by his father, and therefore he was entitled to a settlement by such hiring and service. *Rex v. Burbach*, 1 *M. & S.* 370. *supp.* 155.

111. But where, by a parol contract, the master agreed to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c., the court held that there was here no contract to serve the master, it was only that the master should teach the pauper, and this case was importantly different from *Rex v. Burbach*, inasmuch as there the pauper contracted to work for two years. *Rex v. Bilborough*, 1 *B. & A.* 115. *supp.* 295.

112. And again, where the father agreed with *B.* that *R.* should take his son for six years to teach him the trade of a framework-knitter, and he was to allow *R.* 9s. a-week for three years, for teaching him, and his board and lodging; the court distinguished this from *Rex v. Little Bolton*, inasmuch as by this contract the son was entitled to none of the earnings; and instead of receiving wages from his master, his master was to receive wages from him as the price of teaching him; the whole contract had for its object only the instruction of the son, and they held that he did not gain a settlement under it. *Rex v. Mountsorrel*, 2 *M. & S.* 460. *supp.* 291.

113. A pauper, under age, hired himself generally for a year to a brickmaker, and served part of the time, when he entered into a fresh contract with his master (written, but without seals and unstamped), whereby he covenanted to serve him for three years, to learn to make bricks, and the master to find sufficient clothing, victuals, &c. the pauper engaging to attend the kiln on nights, but there was no covenant by the master to teach the pauper to make bricks; the court held that a settlement was gained, observing that here there was an original perfect contract of hiring and service, which could not be done away with by an invalid instrument, clearly not sufficient to create an apprenticeship; and, on the other hand, that supposing such instrument to be valid, and not operat-

ing so as to create an apprenticeship, then the case was nothing but that of a continuing service, operating under a new contract of hiring, superadding other terms to those of the original contract.

And by *Le Blanc, J.* it was said, that, although it were stated that the boy was to serve his master to learn his business, that would not prevent the agreement from operating as a contract of hiring and service; and that, even if it were intended as an apprenticeship, yet the instrument, being invalid, could not supersede the former valid contract; as to the circumstance of no wages being reserved, that this made no difference. *Bayley, J.* too, said, that he considered the instrument as a contract of hiring and service, and not of apprenticeship. *Rex v. Skinsfield*, 14 E. R. 541. *supp.* 152.

See further title "Settlement by Apprenticeship."

114. Where the pauper was hired from Harborough fair *Of express* to Harborough fair, being one year, subject to a liberty *Stipulations* of being absent eleven or twelve days in the sheep-
for Absence. shearing season, and to have the benefit of what he got

for that time; the court held this not to be a hiring for a year, since the absence was an exception out of the contract at the time of making it. *Rex v. Empingham*, ii. 217.

115. So also where a pensioner of the East India Company hired himself as a servant for a year, with a reservation to himself of two days in each half year when he might go for his pension, it was held that he could not gain a settlement by serving a year under such a contract; for there was an express exception of four days in it, during which the pauper was not to be under the controul of his master. *Rex v. Over*, ii. 229.

116. The pauper was hired for four years, with liberty to leave a week every year to see his friends; the court held that no settlement was gained by service under such contract, since the master had no dominion over the servant for any one whole year. *Rex v. East-
ulme*, 10 E. R. 325. *supp.* 137.

117. A hiring by the pauper from Michaelmas to Michaelmas with liberty to let himself out the harvest month, is only a hiring for eleven months, and not a hiring for a year, although he lodged, not only the eleven months, but the month also for which he let himself out, in the master's house. *Rex v. Bishop's Hatfield*, ii. 211.

118. A pauper was hired for a year from Old Michaelmas, to go away a month at harvest, and to make up the time after Michaelmas; the court held that this was not a hiring for a year, by which word

in the statute must be meant one entire constructive period of 365 days; and *Bayley, J.* observed, that the cases of *Rex v. Buckland* and *Rex v. Rushulme* were in point, and the latter much stronger than the present. *Rex v. Turvey*, 2 B. & A. 520. *supp.* 284.

119. The pauper was hired for a year at 13s. 6d. a week, with liberty of absence during the sheep-shearing season, but to find a fit man at his own expense to do his work during his absence, the pauper's own wages to go on during the time; the pauper was so absent, but occasionally returned during the sheep-shearing period, and assisted in the management of his master's business, and gave directions to the person whom he had employed in his stead: the court held that he gained no settlement—*Lord Ellenborough, Ch. J.* saying, that it never had yet been determined that a service by deputy is service by the servant himself. The distinction taken in all the cases is, whether the liberty of absence form a part of the original contract, so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract: here it was an original exception. *Rex v. Arlington*, 1 M. & S. 622. *supp.* 141.

120. But where *A. clubbed with B.* for three years at a certain rate of weekly wages, with a proviso that if he were prevented from working by bad weather, or want of employment, or illness, there should be a proportionable deduction of wages; it was held that *A.* gained a settlement by serving a year under the hiring, though occasional deductions on these accounts were made. *Rex v. Martham*, ii. 228.

121. A pauper, in consideration of weekly wages, agreed to serve *T. S.* a bricklayer, for three years, but, in case he should neglect his master's business, or lose any time on his own account, in any one week during the first year, that *T. S.* should deduct from his weekly wages in proportion, and *T. S.* agreed to pay wages in proportion to any over-work which the pauper might do in any one week: there were similar stipulations for the second and third years of the term, and it was also agreed that, in case they could not work through severity of weather in any one year, in the winter time, then that *T. S.* should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever; the court held that these were express exceptions in the contract, and that the pauper did not, by serving a year under it, gain a settlement. And the case of *Rex v. Martham* was distinguished from the present, in as much as there no such ex-

press authority was given to contract the relation of servant with another master, while here, so soon as the frost commenced, the original master lost all controul over the servant. *Rex v. Edgmond*, 3 B. & A. 107.

122. But when a servant was hired for a year, and at the time of hiring there was an express agreement that he should be absent for a month during the year on his militia duty, and find a person to do his work during such absence, or to make a deduction of it from his wages, if called out; and on his being called out the mistress did in fact make such deduction; the court held this to be a good hiring for a year. *Rex v. Westerleigh*, ii. 215.

123. So also, where the pauper hired himself, five weeks before Michaelmas, for a year, and at the time of the hiring it was agreed that his wages should be paid weekly at 8s. a-week, and that, being a ballotted man in the militia, he should be absent for the month, and in lieu of that month should serve another at the end of the year; it was held a good hiring for a year, and that the servant gained a settlement, although he were absent 30 days in the militia, and did not serve the additional month. *Rex v. Winchcombe*, Doug, 391. ii. 221. But see observations upon these cases by Lord Ellenborough, *Rex v. Beaulieu*, ante p. 184-5.

Of implied and customary Exceptions. 124. Where the father of a boy, who was about fifteen years of age, contracted with a tin-worker for his son to work at the Stamps for one year, at the yearly wages of 5*l.*, and in pursuance of this contract the boy served the tin-worker by daily working in the stamps, except on holidays and Sundays, according to the custom of tinnerns; the court held this an entire contract for a year, notwithstanding the exemption from work on holidays, and his being free of his master on Sundays, for this was according to the custom of the country, and not an exception in the original contract. *Rex v. St. Agnes*, ii. 214.

125. But where a man hired himself to a clothier, for five years, to learn the business of a shearman, and was to have for the first half-year the weekly wages of 3*s.* and to be advanced 6*d.* weekly wages every succeeding half-year, to find himself in meat, drink, washing, and lodging; to work shearman's hours, but to be at his own liberty at all other times; the court held that this was not a hiring for a year, for there is an exception in it, that the pauper was to work shearman's hours only and be at liberty at all other times. The court here noticed the decisive circumstance of there

being an exception in the original contract; but *Lord Mansfield* said, that if the contract had been an absolute contract for a year, the not working on Sundays and holidays, provided it were the custom of the country not to work on those days, ought not to hinder the gaining a settlement. *Rex v. Buckland Denham*, ii. 214.

126. It seems, however, that if such days had been expressly excepted at the time of making the original contract, no settlement would have been gained. See by *Willis, J.* in *Rex v. Birmingham*, ii. 220.

127. On the same principle of there being an exception in the original contract, where the pauper was hired to work in the silk mills at Macclesfield for the term of three years, at 6*d.* a-week for the first year, 9*d.* a-week for the second year, and 13*d.* a-week for the third year, the master not to find the pauper either in diet or lodging, and the service to be only eleven hours in the six working-days, and all the rest of the time, as well as on Sundays, the pauper to be at liberty and his own master; the court held that this was merely a contract from week to week, and not a hiring for a year. *Rex v. Macclesfield*, ii. 211.

128. So also a hiring for five years as a colt-shearman, to work only twelve hours in a day, is not a hiring for a year. *Rex v. North Nibley*, ii. 226.

129. So also were the pauper covenanted with and served one Bullock, as an artificer in the art of a glass-grinder, for seven years, from six o'clock in the morning till seven in the evening of each day, during the said term, including half an hour at breakfast and an hour at dinner times, except on Sundays, it was held not a good hiring for a year, for he was not to be under the power and coercion of the master during the whole time, which is essential to constitute a hiring for a year. *Rex v. Kingswinford*, ii. 225.

130. And where a girl of thirteen years of age went and worked with a clothier in the business of burling cloth by a weekly hiring of 1*s.* 6*d.* a-week in the winter, and 2*s.* a-week in the summer; the master telling her every Saturday night when he paid her her wages, that she might come the week following, which she did, and continued to work in this manner for a year and a half, returning every evening to her aunt's house in an adjoining parish, and residing with her on Sundays; for to constitute the character of a yearly servant, the servant must be always under the government, discipline, and controul of the master, but this girl was a weekly labourer, and

not at all in her master's service on nights or Sundays. *Rex v. Wrington*, ii. 184.

131. But in another case, the pauper was hired for a year, *good earn, good hire**, to work for his master and no other person to make screws at so much a gross; he sometimes absented himself for a week or fortnight at a time without his master's leave, who, however, received him again, but during such absence he never worked for any other person, and it was stated to be the custom of the place for persons so hired to absent themselves, but not to work for any other master; the court held that a settlement was gained under such hiring. *Rex v. Birmingham, Doug.* 333. ii. 217.

It is to be observed here, that it appeared from some conversation between the master and the pauper, to have been the opinion of both parties, as well as of the neighbourhood, that the former had no power to compel the latter to work during the periods of his absence under such a hiring; the court were of a different opinion; they also said, generally, that it had been solemnly decided, in three cases, that neither the apprehension of the master, the servant, or the neighbourhood, could vary the contract or alter the construction of it, although the apprehension and understanding of the parties might be material to enable the justices to say what the contract was; and so, in this case, it formed no exception in the contract, that it was the general understanding that certain days should be excepted, provided the hiring were in the terms of it, for a year.

With respect to the general expression, that the servant must be under his master's controul during the whole year, by this it was said, was only meant that the master should have a power to compel the servant to work during the whole year, subject to the general law of the land or particular custom of the place. *ib.*

132. In a later case, where the pauper was hired as a bleacher and crofter for a year at weekly wages, and by the practice of the manufactory, when he had finished his appointed week's work, (being to get up a certain number of pieces a-week,) he was at liberty to go where, and do what he pleased without his master's leave, and if he did more than the appointed work was paid for over-work, and was also at liberty on Sundays, although he sometimes made up for lost time by working on Sundays, which, however, was at his own

* To have what he earned, if he earned nothing to have nothing.

option; the court held that he gained a settlement, *Lord Ellenborough, Ch. J.* saying, that, if the argument were pushed to the extreme, there was no contract of hiring without some implied exception; that the law of the land broke in upon such contracts as these on the Sundays, and the master had in this case as much right to the pauper for the whole year as that law would admit of; his Lordship added, that it had been decided, that implied exceptions in the times of service, by the custom of the country, did not break in upon general contracts of hiring for the year. *Rex v. Horwick*, 10 *E. R.* 489. *supp.* 137.

133. And still more recently it was determined, that a clerk in a mercantile house, hired by the year, but serving only during the usual hours of business, thereby gained a settlement, although those hours did not, by the custom of the trade, ever occupy the whole day, and he went wherever he pleased, without asking his master's leave, when those hours were over. *Lord Ellenborough, Ch. J.* again observing, that he could not suggest to himself any contract of hiring in which there were not necessarily some implied exceptions for rest, food, and relaxation. *Rex v. All Saints Worcester*, 1 *B & A.* 322. *supp.* 278.

c. Of the Service,

Of Service under different Hirings.

———— *in different Places.*

———— *under different Masters.*

Absence from the Service, and herein of Dissolution and Dis-
—pensation.

Of Service 134. If a person be hired from 25th March to the
under diffe- Michaelmas following, and after having served, be,
rent Hirings. immediately upon the expiration of that time, hired
again for a year, these several hirings may be connected,
so that service for a year from the commencement of the first
hiring will gain a settlement. *Rex v. Overton*, ii. 250. *acc. Brightwell*
v. Westhally, ii. 251.

135. So a service, under a hiring from Christmas to Michaelmas,
may be joined to a service from Michaelmas to Christmas under a
successive hiring for a year. *Rex v. Aynhoe*, ii. 253.

136. So also a hiring from Lady-day to the Christmas following,
and a service under it, and then a hiring for a year and a service
under it to the end of May, will gain a settlement. *Hanner v.*
Ellesmere, ii. 255.

137. The service under a hiring from Christmas till Whitsuntide

may be coupled with a service till the beginning of March following, under a hiring from the Whitsuntide for a year. *Rex v. Underbarrow and Bradleyfield*, ii. 259.

138. A service under a hiring for a year will connect with similar preceding services under any number of hirings from week to week. *Rex v. Bagworth*, ii. 262.

139. A service for 51 weeks may be coupled with service under a previous hiring for a year; the court, however, intimated, that had the question been for the first time before them, their decision might have been different. *Rex v. Fillongley*, 1 B. & A. 319. *supp.* 288.

140. Again, where the pauper hired himself by the week, nothing being said about Sunday in the contract, but the pauper worked on that day occasionally when asked by his master without receiving any additional wages but only sometimes victuals, received his wages every Saturday night, and lodged and boarded himself, and at the end of nine months was hired for a year, under which hiring he served eleven months; it was held that these several hirings might be joined so as to confer a settlement. *Rex v. Sutton*, ii. 279. 1 E. R. 656.

141. A pauper, before the expiration of her apprenticeship, hired herself and served for a year, the last four months of which were after her indentures had expired, and then hired herself to the same person for another year, of which she served only ten months; the court held that the first service, although without the consent or knowledge of the master, might be coupled with the second so as to form a settlement. *Rex v. Dawlish*, 1 B. & A. 280. *supp.* 287.

142. There must be a hiring for a year by one entire contract; and therefore a year's service under two distinct hirings for half-a-year each is not sufficient. *Dunsford v. Ridgwick, Salk.* 535. ii. 250.

143. And the service must not be discontinued: thus, if a servant be hired for a year, but run away, enter into another service, quit it at the request of his old to his new master, go to sea, and then return to his first master and serve, so as to make up a year without making a new contract, the two services cannot be joined. *Rex v. Ross*, ii. 260.

144. The service under a hiring from five days after Michaelmas to the Michaelmas following, and a complete and absolute departure from the service on Michaelmas day, cannot be coupled with a service, under a new hiring for a year, made by the same master the day after the servant's departure. *Wichford v. Bretford, Fort.* 311. ii. 251.

145. A service for eleven months under a hiring for a year cannot

be joined to a service for six months under a second hiring for a year, if the first service be clearly discontinued, (in the present case by an absence of a fortnight between the services,) although the second hiring took place before the first hiring expired. *Res v. Cooverwall*, ii. 258.

146. Nor can distinct and several hirings for eleven months, with a week's absence between each, be connected so as to form a hiring for a year. *Res v. Houghton*, Str. 83. ii. 252.

147. But where a servant hired himself from Midsummer to the Lady-day following, at 40s. for that three quarters of a year, and at the Lady-day he received his wages, and left his master's service, and went to his father's house, without having any discourse with his master about continuing in the service, and after having been with his father about one hour, was advised by him to go to his master, and see if he could not agree with him for a year, which he immediately did, and lived half a year under this hiring; it was held that he gained a settlement under these two hirings. *Res v. Eyshead Magdalen*, ii. 256. See *Res v. Grendon Underwood*, post. 151.

148. So where the pauper was hired on the 6th of December to serve till the Michaelmas following, and went into the service on the 7th of December, and continued till nine o'clock in the morning on the Michaelmas-day, at which time he received his wages, took his clothes, and left his master's house and service, but about half an hour afterwards the master applied to him to stay, and on the same day at one o'clock he hired himself to the same master, to serve him till the Michaelmas following, and under this second hiring he served three months, it was held that he gained a settlement. *Res v. Ellisfold*, ii. 261.

149. Increase of wages upon a second hiring for less than a year on the day the first hiring for a year ended, and a removal into another parish, are not such a discontinuance of the first service as will defeat a settlement under the several hirings. *Res v. Underbarrow*, ii. 262.

150. If a servant be hired, and serve from November to Michaelmas, and before Michaelmas-day his master offer to hire him from Michaelmas for a year, at certain wages, to which he does not agree, but remains in the house till the second day after Michaelmas, working as usual, and then accepts the offer, and serves part of the year; the services under the latter hiring commence on Michaelmas-day, and may be coupled with the former service so as to gain a

settlement. *Rex v. Sulgrave*, 1 T. R. 778. ii. 266. See *Rex v. Crocombe*, *post*. Art. 159.

151. The pauper hired himself from Michaelmas (old style) for a year, received earnest, and was to go into the service the Wednesday after Michaelmas-day (which fell on a Sunday), on which Wednesday he went to his master according to the agreement, but was then told by him that he had hired another person to do the work for which he had engaged him, but that he might come and serve him in *another capacity* till the Old Michaelmas ensuing, which the pauper at first refused, but afterwards consented to do in the course of the same day, received a second earnest, and agreed for more wages than before, and immediately entered into the service; the court held that the constructive service of three days under the first hiring, and the service under the second, might be coupled, and that a settlement was gained: it was said, that the relationship of master and servant subsisted from Michaelmas to Michaelmas; that the absence between the hiring was by the indulgence of the master, and so reasonable upon the commencement of a service that it had never been considered to impeach the validity of a contract; that, as to the rest, the case was governed by that of *Rex v. Ellisfield*, being all the transaction of a day, a fraction of which the law would not notice. *Rex v. Grendon Underwood*, ii. 264.

The services were of different kinds in the last mentioned case (carter, and milk and plough-man), but no point was raised as to this. See, however, *Rex v. Sulgrave*, 1 T. R. 778. ii. 266. where it is said that the two services, in order to be connected, must be *ejusdem generis*. But see also *Rex v. Sutton*, 1 E. R. 656. ii. 272. where Lord Kenyon seems to be of a contrary opinion. In *Rex v. Great Chilton*, ii. 268. 5 T. R. 672. Lord Kenyon again said, that even if the nature of the service were varied, that would not defeat the settlement.

152. But where a servant was hired for a year, but prevented by sickness from going into the service until a month after the day he is hired, and, on his going into the service, the master refused to take him, but made a new agreement for a year, under which he only serves eleven months, and received 48 week's wages, being less than the rate of the original wages, the court held that he gained no settlement, for that the service never commenced under the first hiring, and that the circumstance of his submitting to the abatement of wages at the end of the year, as rescinding the original contract, destroyed more than the legal or constructive

service; it shewed indeed that there was no hiring for a year. *Rex v. Winterset*, ii. 263.

153. Services in successive years will connect only when the servant, at the commencement of the succeeding year, is unmarried. *Rex v. St. Giles Reading*, ii. 261.

154. And therefore if *A.* be hired at Martinmas to serve in husbandry for a year, at 8*l.* a-year, and in the middle of the year he marry, and then agree to serve his master as a hind for a year from that time at 5*s.* a-week, and to live out of the house at another farm belonging to his master, a service under their several hirings does not gain a settlement. *Rex v. Great Chilton, diss. Lord Kenyon, Ch. J. 5 T. R. 672.* ii. 268.

155. It seems to have been the opinion of the court formerly, that service under a hiring for a year could not be connected with service under a hiring for a less time, unless there were a residence of 40 days under the yearly hiring. See *Rex v. Brightwell*, 10 *Mod.* 287. *Eardisland v. Leominster*, ii. 253.

156. But more recently it was held by two judges (*Lord Kenyon, Ch. J. and Grose, J.*) that where there was only a service of ten days under the yearly hiring, this coupled with antecedent services under former hirings for less than a year would confer a settlement. *Rex v. Adson*, 5 *T. R.* 98. ii. 268.

Of Service in different Places. 157. If, under a hiring for a year, the servant serve half a year in one parish, and then remove with his master and serve the other half year in another parish, he gains a settlement where the last 40 days are served. *Rex v. Ashton*, ii. 273.

158. So if a servant be hired as a warrener, to a warren which is in the joint occupation of two persons living in different parishes, and serve sometimes in the warren, sometimes in the parish where the one master lives, and sometimes in that where the other master lives, he shall be settled in the parish where he lodges the last 40 days. *Rex v. Eldersley*, ii. 274.

159. So where a servant was hired and served for a year, and, without coming to any new agreement, continued to live with his master in the parish in which he was hired about a quarter of a year longer, and then the master took a house in a different parish to which the servant, with the rest of his family, removed, and lived with him for six months under the original hiring; it was held that he gained a settlement in this second parish. *Rex v. Croscombe*, ii. 278.

160. A service with the executor of the master for the remainder of the year in a different parish from that in which the hiring for a year was made, is good; for the death of the master does not dissolve the contract, and the servant by such service gains a settlement in the second parish. *Rex v. Ladoek*, ii. 277.

161. Where a servant was hired in an extra-parochial place, where her mistress had a son-in-law residing, and served alternately whilst accompanying her mistress, in such extra-parochial place, and in the parish of *F.*, where another son-in-law of her mistress lived, the court held that a settlement was gained in *F.* *St. Peter's in Oxford v. Fawley*. See this case as mentioned by *Lord Mansfield*, *Ch. J.* in *Alton v. Elvetham*, ii. 280; there said to be mis-reported in *Strange*, 524, ii. 274.

162. A service performed under a hiring for a year in a different parish from that where the master dwells or has a settlement, gains a settlement in that parish where the service and residence are; as where the master of a coach, living himself at Oxford, hired a servant to take care of the horses at Wycomb, the settlement was in Wycomb. *St. Peter's in Oxford v. Chipping Wycomb*, ii. 275. *Str.* 528.

163. And the same where a huntsman was hired by a gentleman who lived sometimes in *A.*, sometimes in *B.*, while the servant resided in *C.*, to take care of the hounds. *Bishop's Hatfield v. St. Peter's in St. Alban's*, ii. 276.

164. And so where the servant resided to train horses in a parish where the master had neither house nor land. *Rex v. East Ilsley*, ii. 284.

165. Again, where a servant was hired to work at a glass-house in a different parish from that in which the master lived, and resided in that parish, he gained a settlement by residence in the parish where the glass-house was situated. *Rex v. Whitechapel*, ii. 275.

166. So where a servant was hired for five years, which he served accordingly in the parish of *A.* but lodged the whole time in the parish of *B.*, the court held he was settled in the parish of *B.* because of his inhabitancy there. *Rex v. Spitalfields*, ii. 276.

167. But in one case it was held that a mere transitory service of more than 40 days in a third parish would not avoid a certificate; and therefore if a servant, under a hiring for a year, he being a certificated person, go with his master to Scarborough, or other such public place, not for the purpose of settling, but merely to enjoy the season, and with an intention of returning home; and, during their stay there, the year expire, and the servant apply to the master to make a new agreement, and the master tell him it will be time

enough when they get home, and on their arriving at home a new hiring take place, a residence of 40 days in such place does not gain a settlement there. *Alton v. Elvetham*, ii. 280.

168. But subsequently, a servant under a yearly hiring, who served the last 40 days at Exmouth, to which place he had accompanied his master, who had gone there with his family for the purpose of sea-bathing, and lived there in a hired house, was held to gain a settlement in *E*. In the case of *Alton v. Elvetham*, Lord Mansfield said, there were many particular circumstances; the servant was born at Elvetham, under a certificate from Alton, and could not gain a settlement there by his original hiring and service in that place, nor without a discontinuance of it and a new subsequent hiring; no such discontinuance ever happened; the service did not end at Scarborough, the servant continued in his master's service seven years afterwards in Elvetham. So that it was a continuation of the original hiring; the contract did not end at Scarborough. But, his lordship observed, that case by no means laid the law down generally, that no servants can gain settlements where their masters go to drink waters, although they serve there for 40 days; if it did it would be wrong, for no such general rule should be laid down.

And *Willis J.* added, that he hoped it would be now understood that serving a master 40 days at a public place gained a settlement there. *Rex v. Bath Easton*, ii. 285.

169. Still more recently the same principle was acknowledged. *Rex v. St. Andrew's Holborn*, ii. 289.

Upon this occasion, too, Lord Mansfield again remarked upon the case of *Alton v. Elvetham*, saying, that it decided no general principles at all, and that the fact of the servant being a certificated man, which is a statutable disability, was a material circumstance in the case.

170. It would seem that a sailor-boy who hires himself for a year to the boatswain of the Hulks which lie at Chatham, in the river Medway, and serves for a year, sometimes on board one hulk and sometimes on board another, sleeping and being victualled therein, may gain a settlement in that parish within which the hulk lies on board of which he so lives and serves, although his master have a residence in a different parish. *Rex v. Friendsbury*, ii. 347.

171. But the hired servant of a waterman, who serves a year by navigating a boat from Goring to London, will not gain a settlement by an alternate residence on board the boat and at his master's

house, unless he having, during the year, lived at different times 40 days in the parish. *Goring v. Molesworth*, ii. 277.

172. If a house stand in different parishes, the servant is settled in that in which the room stands where she sleeps. *Faversham v. Gravenny*, ii. 274.

173. If the residence of a servant be alternately in two parishes, but he does not continue successively for 40 days in either, but more than 40 days interruptedly in both, he shall gain a settlement in that parish in which he last lodged. *Lowess v. Lanstephan*, ii. 286. *acc. Greenwich v. Longdon*, ii. 278.

174. But the 40 days must be within the compass of one year. Thus where the pauper, being hired to *M.B.*, served that year, and being afterwards hired for another year served half of it, but neither during the first year, nor the year of which the half year formed a part, had resided 40 days in the same parish, although in the whole he had resided there more than 40 days, the court held that he gained no settlement. *Rex v. Denham*, ii. *M. & S.* 221. *supp.* 142.

175. If a servant reside part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than 40 days in each, his settlement is in the parish where he slept the last night. *Rex v. Hulland*, ii. 288.

176. For if there be an inhabitancy, under a hiring for a year, of 40 days, at any intervals throughout the year, in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if, throughout the year, the whole will amount to 40, in that place the settlement attaches. *Rex v. Iveston, Cald.* 258. ii. 289.

177. Thus if a yearly servant serve 40 days in *A.*, then 40 days in *B.*, and afterwards return to his father's house in *A.* for the last three days of the year with the master's consent, he is settled in *A.* *Rex v. Undermilbeck*, 5 *T.R.* 387. ii. 291.

178. Again, where a servant was hired in the parish of Fletcham, and after 40 days' service married, and, from that time, slept with his wife every night for the remainder of the year in the parish of Great Bookham, except the last, when he slept at his master's, in the parish of Fetcham, it was held that his settlement was in Fetcham. *Rex v. Great Bookham*, ii. 289. *in notis.*

179. A servant was hired as a gardener for a year; during the year he married; and, from the time of his marriage to the expiration of the year's service, he lodged with his wife in a different

parish 40 nights, but not successively, and did not lodge 40 nights elsewhere, from the time of his marriage till the expiration of the year; it was held that he gained a settlement in the parish where he lodged with his wife, although it were without the knowledge of the master. *Rex v. Hedsor*, ii. 287. *acc. Rex v. Nympsfield*, ii. 288, *in notis.*

180. In a late case the court held expressly that the settlement is where the place of rest is; and, therefore, where a servant who drove the mail-cart had a bed provided for him by the year at *N.*, where he rested four or five hours of every night during the middle of the night, and afterwards returned in the morning to his master's house at *M.*, and usually went to bed there in his own exclusive room for about two hours (keeping all his clothes, &c. at *M.*, and none at the other place), the court held, that his place of rest was *M.*, and, of consequence, his settlement there, although it sometimes happened that he did not go to bed at all at *M.* for eight or ten times in a month. *Rex v. Mildenhall*, 3 *B. & A.* 374.

181. If the last 40 days be served in a place where no settlement can be gained, the settlement is in the place where the last day of the preceding 40 days are served. *Rex v. St. Andrews Holborn*, ii. 289.

182. It seems that, if the servant reside apart from the master in consequence of sickness or disability, he shall not be settled where he resides during such illness, but where he resided the last 40 days of his effective service. See 1 *Nolan*, 424, and authorities there cited, particularly *Rex v. Sutton*; where the majority of the court intimated a strong opinion that a servant was settled in the parish where he had lived with and actually served his master, and not in one where he had been kept as a lunatic for the last two months of his year's contract.

Service with different Masters. 183. A service under a hiring for a year, part performed with the original master, and the remainder with a stranger to whom he had let his farm, is a good service, if there be no dissolution of the original hiring. *Rex v. Ivinghoe*, *Str.* 90. ii. 293.

184. So a service with the executor of the master for the remainder of the year, is good, for this is a continuance of the same service and not a new contract, and the death of the master does not dissolve the original contract. *Rex v. Ladock*, ii. 277.

185. Where the master died three weeks after hiring the pauper for a year, the latter, abiding with the widow and sons to the end of the year, gains a settlement. *Rex v. Hardhorn cum Newton*, 19 *E.R.* 51. *supp.* 144.

186. And the circumstance of being turned away before the year's service was completed, upon a frivolous pretence, will not defeat the settlement, the pauper being willing and offering to complete her part of the contract. *ib.*

187. A service, with the consent of the original master, to a third person, is service to the master, since it is not necessary that the service should be with the same person; and even if such service be without the original master's consent, yet the absence may be dispensed with, and such service be good service if the master receive the servant again. *Rex v. Beccles*, ii. 294. See *Rex v. Thistleton*, &c. *post.* Art. 210.

Of absence from the Service.	{	on Account of Illness.
		by Default of the Servant, and in what cases cured by the Master dispensing with the Service.
		with express Consent of the Master.
		by default of the Master, and in what Cases acquiescence by the Servant dissolves the Contract.
		by the Custom of Trade, and on Militia Duty.

How far in each case a Dissolution of, or Dispensation with the Service.

188. The rule which the Court of King's Bench has laid down as the test whether the circumstances attending the departure of a servant before the end of the year amount to a dissolution of the contract, or only to a dispensation of the service, is whether the master have the power afterwards of compelling the continuance of the service, or the servant of compelling the master to take him back, and whether there be any legal means of redress; if not, then there clearly is a dissolution of the contract. *Rex v. King's Pyon*, 4 *E.R.* 341. ii. 347.

By Lord Ellenborough, *Ch. J.* "If the master have such power, and chuse to dispense with it, that is a dispensation." *Rex v. Rushall*, 7 *E.R.* 471. i. 725.

"There can be no dissolution without the consent of the parties, or some justifiable cause of complaint on the part of the master." By Abbott, *Ch. J.* *Rex v. Polesworth*, 2 *B. & A.* 482. *supp.* 290.

189. The accidental illness of the servant, although it prevent him from fulfilling the duties of his place, will not prevent a settlement unless the servant voluntarily relinquish his part of the contract. Thus where a servant, days before the year expires, is removed from her master's house on account of her illness, and the next day receives her whole wages, and does not recover so as to return within the year, this is no dissolution of the contract. *Rex v. Christchurch*, 310.

90. For a servant who thus lies under the visitation of the hand of God, which befalls him not through his own default, is, and is to be taken to be, all the while in the service of his master, who is bound to take care of the servant so taken ill in his service, and is not to deduct wages in proportion to the continuance of the servant's sickness. The act of God ought not to prevent the servant from gaining a settlement, and it can make no difference whether the illness happen in the middle or at the end of the year. *Ibid.* and *v. Islip*, ii. 300. *acc. Rex v. Oxleworth*, ii. 306.

91. So a servant disabled by accident in the beginning of the year, and never afterwards received into the service, gains a settlement. *Rex v. Sharrington*, ii. 322.

92. If a servant, having received a kick from one of his master's boys, leaves his service three weeks before the end of the year, without his master's knowledge, and go to his friends in order to be cured, this departure is no dissolution of the contract or interruption of the service, although the master deduct from the servant's wages for the time he was absent; and therefore the servant gains a settlement, although he were not able to return until the year expired. *Rex v. Maddington*, ii. 312.

93. So a servant who is deprived of his reason 40 days before the end of the year, and is taken home by his father in another parish, receives his wages for the whole year, does not by this absence lose his settlement in the master's parish. *Rex v. Sutton*, 5 T. R. ii. 336.

94. But if a servant be taken ill five days before the end of the year, and go home to his mother, who, by his desire, fetches away his clothes, and receives the year's wages, excepting 1s. for the five days, this is a dissolution of the contract, since each party consents to put an end to it. *Rex v. Whittlebury*, 6 T. R. 464. ii. 340.

95. In another case, where a yearly servant, about a fortnight before the end of his year, being too ill to work, was paid by the

master his full wages, when he voluntarily left the service, went to a hospital, and never returned; the court held, that he did not gain a settlement. *Rex v. Sudbrooke*, 4 E. R. 356. ii. 349.

Default of the 196. If the absence be occasioned by the default
Servant, and of the servant, it will prevent the settlement, as if a
how cured. master turn a female servant away on her being
with child. *Rex v. Marlborough*, ii. 299. 12 Mod. 402.

197. For a master, under such circumstances, does no wrong in turning the servant out of his house; to keep her in it would be *contra bonos mores*. *Rex v. Brampton*, ii. 317.

198. So if a male servant be turned away by his master before the expiration of the year, on his being charged as the reputed father of a bastard child, he will lose his settlement. *Rex v. Wedford*, ii. 319.

199. So if a servant be taken into custody for an offence, and, by the detainer, be prevented from continuing in his service, the master may discharge him before the end of the year; and such discharge is a dissolution of the contract, and impedes his gaining a settlement; it is by his own act that he is incapable of completing the contract, which is equivalent to a wilful absence. *Rex v. Westmeon*, ii. 320.

200. But if the hiring take place after the offence committed, the master shall not on that pretence discharge the servant. *ibid*.

201. An absence of some days at the end of the year, by reason of a commitment for getting a bastard child, prevents a settlement, although the master were the overseer of the parish, and active in procuring the commitment, and the pauper were let out as soon as the year expired, on giving his own bond to indemnify the parish. *Rex v. North Cray*, ii. 322.

202. So where a pauper, to avoid being taken up for a bastard child, told his master that he must be off, and asked the master for money, which he gave him, and then ran away, and after an absence of nine days returned to fetch away his clothes; this was held a dissolution of the contract, although at the time he returned he was asked to stay, and continued in the service to the end of the year. *Rex v. East Kennett*, ii. 324.

203. If a servant be hired for a year; but, three weeks before the end of the year, depart from the service, and abate so much out of his wages for the three weeks, this is a dissolution of the contract, although the master do not object to the going away. *Parlet v. Burnham*, ii. 300.

304. So where the servant served the year, except one week, which he neglected to serve, on the ground that he and his master could not agree respecting wages for the ensuing year, and therefore quitted the service without any compulsion on the part of the master, the court held that the words "without any compulsion" were to be understood that he had quitted the service by mutual consent, and that therefore the service was interrupted, and no settlement gained. *Sheen v. Godalming*, ii. 302.

305. Where the pauper was bribed to quit his master's service (in order to prevent his settlement, but the fact of fraud was not specially found by the sessions), and the master insisted upon a deduction of wages for the time of absence, which the pauper allowed; the court intimated a strong opinion that he did not gain a settlement, the contract being dissolved; but the case was decided upon a defect in the order. *Rex v. Preston*, ii. 303.

306. Where a servant, on being beaten by her master 16 days before the end of the year, desired him to dismiss her (threatening complaint to a magistrate), and received her whole year's wages, and went away, she thereby dissolved the contract. *Rex v. Jpwell*, ii. 343.

307. And where a servant, who had been improperly turned out of doors by his master, but subsequently requested by him to return to his service, refused to do so, the court held that this was a clear interruption of the service, and that he gained no settlement, although he received the whole year's wages. *Rex v. Grantham*, T. R. 754. ii. 334.

308. A servant, hired for a year, served till within a fortnight or three weeks of the end of the year, when, upon a dispute between him and his master, he, in consequence of his master kicking him, could not stay, but went to his father's house, but in the course of the following week, and before the end of the year, he returned with his father to his master's house, and received the whole of his wages, and half-a-crown over for himself, when his master asked him to stay, but he refused, and went back to his father's house, and it was held that this absence from service prevented his settlement. *Rex v. Corsham*, 2 E. R. 303. ii. 346.

309. So where the servant, a few days before the end of the year, went away in order to seek for another place, without asking his master's consent, and on his return before the end of the year, the master insisted on turning him away, and offered him his wages up to that time, which he accepted without any objection, though he

wished to have staid the year, this absence was considered a dissolution of the contract, although the servant wished to stay out the year. *Rex v. Clayhydon*, 4 T. R. 100. ii. 332. See Art. 219, post.

210. And if a yearly servant, three weeks before the end of his year, hire himself to a second master, provided the first would let him go, and the first master, a week afterwards, consent, and pay him his whole wages, it is a dissolution of the contract with the first master. *Rex v. Thistleton*, ii. 339. 6 T. R. 185.

211. Where a hired servant was taken up on a charge of bastardy, and married the next day, and was removed to his former parish, against which order of removal he neglected to appeal, the court held that such absence was an interruption of the service, and was not cured by his returning to his place, serving out the remainder of the year, and receiving his full wages; the court saying, that he had no right to return to his master's parish under such circumstances, and, by neglecting to appeal against the order of removal, had put it out of his power to fulfil the contract of hiring and service. *Rex v. Kenilworth*, 2 T. R. 598. ii. 328.

212. Generally speaking, however, the absence of the servant, whether in the beginning, the middle, or at the end of the year, may be cured by the master receiving him again into his service before the expiration of the year, provided the contract be not dissolved. *Rex v. Eaton*, ii. 304.

213. Therefore, if a servant absent himself for a night or two without the leave of his master, as to see his mother, but the master receive him again into his service within the year, such absence will not defeat the settlement. *Rex v. Islip*, ii. 300. Str. 423.

214. And where a servant often absented himself to drink or play for a week or a fortnight at a time, without ever asking his master's leave, but his master, although angry, always received him again, the court said there was no doubt as to the service being sufficient. *Rex v. Birmingham*, Doug. 353. ii. 217.

215. So a service, though not commenced until three days after the hiring, and interrupted by the absence of a fortnight, without the master's consent, is a sufficient service, if the master confirm it by permitting a continuation of the service on the servant's return. *Rex v. Hanbury*, ii. 307.

216. So where, after a service of eight weeks, the servant ran away, and was absent for thirteen weeks, during which time he worked with and received wages from another person, and at the expiration of which time his master apprehended him with a war-

met, but in his way to a justice, asked him whether he would come back to his place, or go to prison? and told him that if he would go back to his place, and go on as he ought to do, he might; and it was agreed that the servant should abate 1s. a-week from his wages for the time he had been absent, the court held the absence was dispensed with. *Rex v. Inhabitants of East Shefford*, ii. 335.

217. Where a servant, under a yearly hiring, served two months, and was then, upon the complaint of his master, committed to the house of correction for one month, but, after an imprisonment for nine days, was, upon the application of his master, liberated, and returned immediately into his service without any mention of terms of service, which went on as before, only the master deducted his wages for the time the servant was in prison, and the service, in the whole, was for about nineteen months, the court held that such absence, by the imprisonment, was not an interruption of the service so as to dissolve the contract, the master having thought proper to receive the servant again; that it was, however, in the master's election to have dissolved the contract by refusing so to receive him. The court said it would be clearly against the policy of the law, that the servant, by his own act of delinquency, should have the power of dissolving the contract*. *Rex v. Barton-upon-Irwell*, 2 M. & S. 329. *supp.* 180.

218. But if the contract have been once positively dissolved, no subsequent arrangement between the master and servant can set it up again. Thus, if a servant serve his master for six months, and, on being paid his wages, go away for a fortnight, and hire himself to another master, and return again without making any new agreement, this absence is an interruption to the service, although the master receive him again, and he serve over the year for the time he was absent; for there is, in this case, an absolute dissolution of the contract. *Rex v. Ross*, ii. 315.

219. So if a master insist on turning away his servant, and throw down his wages, and the servant take them up, and then go away, and after the expiration of six days return at his master's request, and serve the remainder of the year, the absence is not purged by the subsequent return; for the contract being once dissolved, cannot be set up again by a subsequent agreement. "The meaning of 'purging an absence,' is where the act itself is doubtful." *Rex v. Gresham*, ii. 326.

* The servant was married when he returned into the service.

220. So if a servant, within three weeks of the end of the year, receive his wages, and be discharged with mutual consent, the dissolution of the contract, which cannot be restored by his again receiving by the master's wife before the year expires. *Rex v. Caverswall*, ii. 308.

See also *Rex v. East Kennett*, ante. Art. 202.

By express Consent of the Master. 221. The implied assent of the master to the servant's absence, shewn by again receiving him, is considered a sufficient dispensation with it to preserve the settlement, an express consent by the master to his servant's absence during the service, will *à fortiori* have the same effect: provided always, that there be no special provision, at the time of hiring, to this effect. Thus, if a servant be hired for a year, and, three weeks before the end of the year, go, with his master's permission, to the herring fishery, and provide another person to serve in his place during his absence, this is no dissolution of the contract, although he do not return until three weeks after the year is expired. *Rex v. Goodnestone*, ii. 305. But see *Rex v. Mildenhall*, post. Art.

222. So if a servant, five weeks before the end of the year, go, with his mistress's leave, to work in a different parish, and, on receiving his year's wages after the year expires, voluntarily return the amount of the money he had earned during the absence, this is an absence with leave, and therefore no dissolution of the contract. *Rex v. Nether Heyford*, ii. 309.

223. On hiring from Michaelmas to Michaelmas, if the servant say that he cannot come until the day after Michaelmas-day, and the master reply he will shift for himself, this is a permission of absence; and if the servant continue in his service till the day before the ensuing Michaelmas-day, and then quit by leave from his master, it is a good service for the year. *Rex v. Bray*, ii. 315. But see *Rex v. Rushall*, i. 725.

224. A servant, the day before the year expires, desires his master to discharge him, that he may have a day with his friends before he goes to another master, to whom he had hired himself, and to this the master consents, and the servant is discharged; this is an absence with leave, and no dissolution of the contract. *Rex v. Potter Heigham*, ii. 316.

225. A footman, two months before his year expires, marries a maid-servant in the family, who had given warning to quit, but who was desired by her master to stay till a future day, (which day was

ior to the expiration of her husband's year) on which day she her husband also, on the master's proposal, went away, which thirteen days before the husband's year expired, but the master him his full wages; this was held an absence with leave. *v. Richmond*, ii. 316. See *Rex v. Gresham*, and *Rex v. St. p in Birmingham*, post.

26. It seems, however, that what would have been a dissolution of the contract, had the transaction been *bonâ fide*, will amount to a dispensation if fraudulent. Thus where the servant served within ten days of the end of the year, and then, telling his master that he did not wish to be settled in the parish, asked his master to go and visit his relations, to which the master consented, he accordingly went away allowing a deduction from his wages, when the year was expired, returned, and hired himself as a labourer, the court held that the service was not interrupted, that the leave and consent of the master was fraudulent. *Rex v. me Selwood*, ii. 312. See *Rex v. Preston*, ante, Art. 205.

27. And where on the hiring the master said, "You shall go a fortnight at Michaelmas on account of settlement, and I give you that fortnight to get what you can;" this was held to be dispensing with the service, and not an exception in the contract, that, therefore, the fortnight's absence did not prevent the man from gaining a settlement; the fraudulency of the transaction was not noticed in this case. *Rex v. Sulgrave*, 2 T. R. 376. 326.

28. Yet where the servant, three days before the end of the year, for the purpose of avoiding a settlement, proposed to his master to go before a justice in order to be discharged by him, which was done accordingly, this was held to be a dissolution of the contract, and the consent not fraudulent, since in this case the master made no objection to the settlement. *Rex v. North Basham*, ii. 323. see *Rex v. Potter Heigham*, ii. 316.

229. An absence created by the default or contrivance of the master will not defeat a settlement; as if he turn the servant away fraudulently, on purpose to prevent a settlement being gained in a particular parish. *East v. Westhorsley*, Str. 526. ii. 302. acc. by Ashurst, J. *Rex v. Philip in Birmingham*, ii. 329. 2 T. R. 624.

30. Or, it seems, if the servant be ill, and be turned away solely to his account. *Rex v. Hardingham*, Str. 168. ii. 299. acc. *Rex v. 2*, ii. 300.

the last three days, professing his willingness to serve, was no dereliction of his service so as to dissolve the contract at the end of the year. *Rex v. Islip*, ii. 300. *Str.* 423.

232. If a servant hired for a year give warning, eight days before the expiration of the year, to leave his master at the end of the year, and the master discharge him on the same day, pay full wages, the servant being willing to stay till the end of the year, the contract is not thereby dissolved, so as to prevent a settlement; for it is merely dispensing with the remainder of the service. *Rex v. St. Philip in Birmingham*, 2 T. R. 624.

233. And where the servant was turned away on a pretence, as for throwing more sand on the floor than was necessary, but offered and was willing to stay out her year, in fact she took away her clothes the day after she was discharged, and received the wages insisted upon by her master, as he was bound to pay, she demanding, however, a larger sum as due to her. *Horn v. Newton*, 12 E. R. 51. *supp.* 144. But see *Reddon*, *ante*, 4 T. R. 100.

234. A servant hired at yearly wages, was discharged several days before the end of the year, upon the master's bankruptcy, and received the full year's wages, this was held a sufficient to gain a settlement. *Rex v. Andrew Holborn*, ii. 330. 2

235. So where a master being obliged to leave his

foreseen circumstances, to break up house-keeping and dismiss the want; but paid her her full wages to the end of the year; this was held to be a dispensation of the service. *Rex v. St. Bartholomew, parish*, ii. 318.

337. But, in a much later case, the pauper, being settled at Great Witley, hired himself at yearly wages for a year to a master living in another parish, as a servant in husbandry. He continued to live in such service till 28 days before the expiration of his year, when the master gave up his farming business, sold his stock by auction, and paid off and discharged the pauper, and the other husbandry servants, paying them their full wages, and telling them they might go where they liked. The pauper worked with another person during these 28 days.

The sessions were of opinion that this was a dispensation; but the court of K. B. held that it was a dissolution of the contract, *Lord Denbrough, Ch. J.* saying,—“I cannot but observe that I am sorry for some of the cases on this subject, which have created such an artificial system. I think that not only the decision of the sessions in this case is unreasonable, but that several of the cases, on which it professes to stand, are unreasonable also.” *Rex v. Bray, M. & S.* 20. *Supp.* 289. The cases cited were the three preceding ones.

338. It seems to be established that, if the servant acquiesce in the management, the contract is dissolved. As where the master insisted upon turning the pauper away, and threw him down his wages, which the servant took up, and went away, conceiving himself to be free. See *Rex v. Gresham*, ii. 326.

339. Again, where a servant, who had been hired for a year, was discharged by her master four months before the year expired, and to a magistrate for redress, she being desirous of continuing in the service; the magistrate ordered the master to take her back, to pay her the whole year's wages (but not some wool which he had also agreed to give her if she behaved well). The master refused to take her back, but paid her the whole year's wages; and the money she took, and tendered herself as a servant to others; and it was held that the contract was thereby dissolved, and no benefit gained under it. *Rex v. King's Pyon*, ii. 347. 4 *E. R.*

340. Five days before the end of the year a servant absented herself, by leave, one day from his master's service, to look out another place, and, on his return, the master, on some trivial

wages; and this was held a dissolution of the contract by the servant's consent. *Rex v. Leigh*, 7 E. R. 539. i. 730.

241. So where the servant absented himself to be married, and on his return to the service the master refused to keep him, and offered him his wages, deducting for the absent time, the servant refused to accept, but, on the master's threat to sue before a justice, the servant called him back, and said he would take the money offered, and that he parted with the master's consent, the court held this a clear unequivocal dissolution of contract. *Rex v. Seagrave*, ii. 321.

* 242. The pauper desired her mother to look out for her, and the mistress, on the application of the mother, before Old Michaelmas, said that she would give her the same wages as her other servants, and wait till she came. The mother made no absolute agreement for her daughter, but informed her that she had got a place for her if she liked. A week after Old Michaelmas the mistress applied to the mother to know if she liked to come into her service, and they agreed for the first time, for certain yearly wages, (the same as the other servants,) with liberty of parting at a month's wages. The pauper gave a month's previous notice to quit at Michaelmas-day, which the mistress accepted, and procured her to come on that day, when the pauper received

t this was a dissolution of the contract before the end of
; by the notice to quit given and accepted, and not a mere
tion of the service; and that, consequently, no settlement
ned by such hiring and service. *Rex v. Rushall*, 7 T. R. 471.

Where a master consented to his servant's leaving his ser-
o days before the expiration of the year, and paid him his
es, it was held by three judges to be clearly a dissolution of
tract; by one judge*, however, that the sessions might,
e facts, have drawn a conclusion that the master had dis-
with the service for the remaining day of the year. *Rex v.*
me, 12 E. R. 550. *Supp.* 148.

It makes no difference that the servant procures another
to work in his place during his absence. Thus, where a
before the end of the year, applied for his discharge, which
ster refused, unless he could get another to serve in his
and the servant did procure such person, and then left the
and hired himself to another master for the remainder of
r, the court held that the contract was dissolved. *Rex v.*
hall, 12 E. R. 482. See *Rex v. Goodnestone*, *ante* Art. 221.
Upon a case sent up, the sessions must state as a fact,
the master dispensed with the service before the end of
; or whether there was a dissolution of the contract by mu-
scent. *Rex v. St. Peter Mancroft*, ii. 344.

246. An absence from service on Sundays and
om of holidays, if that be the custom of the trade in which
ind as the servant is employed, will not prevent the settle-
aman. ment. *Rex v. St. Agnes*, ii. 313. *Rex v. Horwick*, 10
39. *Rex v. All-Saints, Worcester*, 1 B. & A. 322.

And by *Willes, J.* (in *Rex v. Birmingham*, ii. 220.) a ser-
every day but Sunday is, in point of law, a service for a

pect of absence on militia duty, see title "*Militia and*
," Art. 58.

* Le Blanc.

1. To prove a settlement by hiring and service, there must be evidence given of a contract either express or implied. *Gregory Stoke v. Pitminster*, ii. 183.

2. With regard to the declarations of paupers, &c. relative to their settlements, see title "*Evidence*," Div. III.

3. In one case, it was held sufficient proof by the mother of the pauper that her husband had gained a settlement by hiring and service some years back, and had done nothing since, to her knowledge, by which he had gained a subsequent settlement. The man himself was in England at the time of her examination. *Rex v. Yspitty*, 4 M. & S. 52. *Supp.* 251.

4. When a general hiring is proved, it shall be taken to be *prima facie* evidence of a hiring for a year. *Rex v. Wincaunton*, ii. 195.

5. Evidence of a pauper's having lived in the capacity of an ostler, and of his having said that he was settled in the parish, will support the inference that he was hired for a year. *Rex v. Holy Trinity*, ii. 352.

6. Where the pauper was seen and known to have been a servant in husbandry for upwards of a year, this was held to be strong presumptive evidence of a yearly hiring. *Rex v. Lyth*, ii. 360. 5 T. R. 327.

7. And so where there was a service of nine years, under unstamped articles of agreement, and a continuance to serve for four years longer without any new agreement, the court held that the sessions were warranted, from the fact of a service for four years at wages, though not specified, to presume that it was under a hiring for a year, where there was nothing in the case to repel such presumption. "If the wages were not specified, the pauper would be entitled to reasonable wages." *Rex v. Pendleton*, 15 E. R. 448. *Supp.* 38. and see note at the end of the case.

8. Nor is such presumption destroyed by the servant having originally agreed for a period short of a year, if she afterwards live in the same service for a year or more; as where a servant was at first hired from March to Michaelmas, but continued in the same service for three years. *Rex v. Long Whatton*, 5 T. R. 447. ii. 356. also 1 Nol. 434. and note.

9. And where a servant after serving a year, part of which was under a retrospective hiring, continued in the same service after the expiration of the first year, Lord Kenyon said there was abundant reason for the sessions to presume a hiring for a year from that time. *Rex v. Hales*, 5 T. R. 668. ii. 357.

10. In a case mentioned above (*Rex v. Pendleton*) the court held that, although such unstamped articles of agreement could not be given in evidence to prove the agreement between the parties, yet that the sessions might look at the instrument to see the duration of the contract under it, in order to guide them in receiving evidence of the subsequent service to which it did not apply.

11. In another instance, where the pauper only had executed a deed, by which he became bound to serve the master for a year, and afterwards entered into and continued in his service for that period, the court held that such deed, although not executed by the master, ought to have been received in evidence to show the terms of the hiring. *Rex v. Houghton Le Spring*, 2 B. & A. 375. *Supp.* 276.

SETTLEMENT BY APPRENTICESHIP.

1. By 3 W. 3. c. 11. s. 8. if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.

- I. OF THE BINDING.
- II. — THE DISTINCTION BETWEEN IMPERFECT CONTRACTS OF APPRENTICESHIP, AND OF HIRING AND SERVICE.
- III. — THE TIME AND PLACE OF INHABITANCY.
- IV. — SERVICE WITH DIFFERENT MASTERS.
- V. — DISCHARGING THE INDENTURES.
- VI. — THE EFFECT OF CERTIFICATES.
- VII. — THE EVIDENCE TO SUPPORT THE SETTLEMENT.

I. *Of the Binding.*

1. As to the form of the instrument by which the apprentice is bound, see title "*Apprentice*," *Arts.* 22—34.*

2. If a person be bound apprentice, though to a master who is incapable of entering into such a contract, yet the incompetency of the master shall not prevent the apprentice from gaining a settlement. *Anonymous*, ii. 362.

3. Therefore where the parish-officers told the father of a poor boy that they would give him 20s. to bind his son apprentice, and the father accordingly bound him to an infant of fourteen years of age, who was then resident in his mother's house as a part of her family, and had no business of his own, it was held that the poor boy gained a settlement by this binding. *Rex v. St. Petros*, 4 T. R. 169. ii. 377.

4. So also, if an infant bind himself apprentice, he will gain a settlement under the indentures; for they are not void, but only voidable, and an infant may make an indenture for his own benefit. *Newbury v. St. Mary's*, Fo. 154. ii. 363.

5. A settlement may be gained where the apprentice is bound, though the indenture be not executed by the master. *Rex v. St. Peter's on the Hill*, ii. 367.

6. Therefore, where an infant was bound apprentice by the parish, and the original indenture and its counterpart allowed by two justices, and signed by the overseer, but neither the original indenture nor the counterpart were executed by the master, but he received the infant into his service as his apprentice, and the apprentice continued with him the whole term, it was held that he thereby gained a settlement. *Rex v. Fleet*, ii. 371. See acc. *Le Blanc, J. Rex v. Ribchester*, 2 M. & S. 155. Supp. 162.

7. Nor is it necessary (in the case of a parish apprentice) for the purpose of a settlement, that the apprentice himself should execute the indenture. Thus it was held sufficient where executed only by the master and parish officers. *Rex v. St. Nicholas, Nottingham*, 2 T. R. 726. ii. 373.

8. Or by the master and reputed father. *Semble Rex v. Badby*, i. 549.; but the point was not expressly raised.

* Art. 32. is *Rex v. Laindon*, at p. 54. by mistake called *Rex v. Highnam*.

9. Nor is the execution by a parish apprentice necessary, even if he be taken to the service contrary to his inclination. *Rex v. Wolstanton*, i. 606.

10. In the case, however, of other than parish apprentices, the apprentice himself must execute the deed. See title "*Apprentice*," *Arts.* 43. 44.

11. Certain parish officers, wishing to put out apprentice a child of the age of nine years, upon the refusal of his mother, withdrew her parish allowance; but two years afterwards, she, not being able to support him, went to the parish officer, and consented to her son being put out apprentice, and by desire of that officer chose a master, to whom the parish officer agreed to give three guineas, &c.: afterwards all the parties met, and went before the justices, who, thinking that the master had already a sufficient number of apprentices, refused to bind the son, whereupon the parish officer, declaring that if he could not have the child bound there, he would elsewhere, took the parties to an inn, and procured an indenture, which was regularly executed; and the pauper, with the consent of his mother, bound himself for 7 years, the premium 3 guineas, the duty amounting to 1s. 6d., being 6d. for each pound of the premium, and all expenses being paid by the parish officer. The sessions, in quashing an order of removal, founded their judgment on fraud upon the above facts. The court said that it did not appear to have been intended to be a binding as a parish apprentice, if so, it might have been deemed defective; that it was, independently of the statute, a binding with the consent of the mother, the son, and the master; that the justices had found fraud, but that there were no circumstances to warrant such a conclusion except that, when the parties could not obtain the binding before the justices, they went elsewhere, and perfected it in another way. And the court quashed the order of sessions, which quashed the order of removal from the place of birth to the parish where service under the apprenticeship took place. *Rex v. Kilby*, 2 M. & S. 501. *Supp.* 292.

In respect of execution by the parson, under 7 Jac. 1., and enrolling indentures of apprentices to mariners, &c. see title "*Apprentice*," *Arts.* 264. 272.

12. The indenture may be for a greater or less time than required by the statutes (see title "*Apprentice*," *Arts.* 176, 177.); or even for an indefinite time if not avoided by the parties themselves, since this defect does not render the instrument *ipso facto* void, the

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statutes being, in this respect, directory only and not compulsory. *Rex v. Wolstanton*, i. 606. *St. Nicholas v. St. Peters*, ii. 363.

13. The settlement will not be affected although the binding be defective in omitting part of the form required by the 43 *Ed. c. 2. s. 5*. *Rex v. St. Petros*, ii. 368.

14. So a binding and inhabitancy will gain a settlement, although the apprentice fee be not inserted in the indentures pursuant to the 8 *Ann. c. 9. s. 39*; for that only subjects the master to a forfeiture, but does not make the indenture void. *Rex v. Northowram*, ii. 367.

15. No settlement can be gained by binding and inhabitancy unless the deed be legally stamped. *Salford v. Storeford*, ii. 363. But see "*Apprentice*," *Art. 256*. as to the exemptions of certain Indentures from Stamp duties.

16. With regard to the allowance by the justices of parish indentures, &c. &c. See title "*Apprentice*;" also 56 *Geo. 3. c. 159*. in *Appendix*.

II. Of the distinction between imperfect Contracts of Apprenticeship, and of Hiring and Service.

17. If the contract be intended for an apprenticeship, but be deficient either from want of a stamp, or because there is no deed, &c. it cannot be construed into a contract of hiring and service, although there be a service under it of many years. *Rex v. Ditchingham*, ii. 377. 4 *T. R.* 769. *Salford v. Stoneford*, ii. 368. *Peterchurch v. All Saints, Hereford*, ii. 370. *Rex v. Margram*, ii. 378. 5. *T. R.* 153. *Rex v. Laindon*, 8 *T. R.* 379. ii. 378.

18. Thus where it was agreed between the pauper and a stone-mason, that the mason should take him apprentice for six years, and provide him with meat, drink, washing, lodging, and clothing; that the pauper should work for him as his apprentice during the time, and that indentures should be executed between them accordingly, but no such indentures were ever executed, the court held that he could not gain any settlement by serving the six years, for he was neither bound as an apprentice, nor hired as a servant. *Rex v. Whitchurch Canonickorum*, ii. 368.

19. So where the master and father of a boy agreed, under seal, that the master should teach the son the art and mystery of weaving for five years, and find utensils, and the son should receive half his earning, and the master the other half, under which the boy served out the time as an apprentice, it was held that this agree-

ment between the father and the master (to which the son was no party) not binding the son, or the father for him, to any service to the master, but the son's service, in fact, being merely voluntary, was no apprenticeship in point of law, and, consequently, that no settlement could be gained by the son serving his master under such a contract. *Rex v. Cromford*, 8 E. R. 25. i. 733.

20. In another case, where it was evident that an apprenticeship was intended, but the parties, in order to save the expense of the indentures and the duty, signed an agreement on unstamped paper, and a sum of four guineas was paid by the pauper to the master, the court held that no settlement could be gained by service under such agreement, saying that it was evidently meant to defraud the revenue, to have the advantage of an apprenticeship without the expense, and, if it were not intended as an apprenticeship, why, it was asked, were the four guineas given to the master? *Rex v. Highnam*, ii. 371.

21. In a previous case, however, (see title "*Apprentice*," ante Art. 30.) it was said by Lord Mansfield, that in all those cases of apprenticeships which had been holden to be defective, and not convertible into contracts of hiring and service, the pauper had been spoken of as an apprentice, and as such to serve, and that, in the present case, there being no such words used, the pauper gained a settlement by hiring and service. *Rex v. Little Bolton*, ii. 222. and see *Chesterfield's case*, title "*Apprentice*," Art. 31.

22. But subsequently, the court held that an agreement on unstamped paper "to serve three years to learn the business of a carpenter, and to receive wages, which were to increase each succeeding year," was a defective contract of apprenticeship.—The case of *Rex v. Little Bolton* was said by Lord Kenyon to be an anomalous case, and the principle was established, that, in order to constitute the relation of master and apprentice, it is not necessary that the term *apprentice* should be expressly used; the court, however, seemed to lay stress upon the fact of a premium having been given to the master, as shewing the intention of the parties to create an apprenticeship. *Rex v. Laindon*, 8 T. R. 379. ii. 378.

23. In a still later case a contract under seal, and stamped, to serve another for three years at so much a week, the master agreeing to teach the other a trade, and the latter agreeing, if he lost any time to the prejudice of his master, to abate so much a day, was held to constitute an apprenticeship: it was enough, the court said, if the contract were that one should teach and the other learn a

trade; that no technical words were necessary to constitute the relation of master and apprentice, nor that any premium should be given to the master.

And by *Le Blanc, J.* "The contract was either to serve as an apprentice or as a hired servant, it is immaterial which in this case, for, as the pauper has served a year under the agreement, *quâcunque viâ datâ*, he gains a settlement." *Rex v. Rainham*, 1 E. R. 531. ii. 385.

24. See *Rex v. Eccleston* (*ante*, title "*Settlement by Hiring and Service*,") where *Lord Ellenborough* said, that, as the case then before the court was in terms the same as *Rex v. Little Bolton*, and as *Lord Kenyon* had not thought proper expressly to overrule that case, he thought it better, in order to avoid introducing uncertainty into this branch of the law, to concur in that decision, however unwilling he should have been to have done so in the first instance; and his lordship added, that he should have said, upon general reasoning, that, where the contract was that the master should teach the other a trade and the latter was to do nothing ulterior the employment in that trade, the contract was a contract *apprendre* in the true sense of the word. *Rex v. Eccleston*, 2 E. R. 298. ii. 230.

25. Upon a subsequent occasion, *Lord Ellenborough, Ch. J.* further observed that, with respect to *Rex v. Little Bolton*, the convenience of the thing was in support of it. *Rex v. Skinfield*, 14 E. R. 541. See *ante*, title "*Hiring and Service*," Art. 113.

See also *Rex v. Burbach*, title "*Hiring and Service*," Art. 110. where the court again, under all circumstances, thought it best to adhere to *Rex v. Little Bolton*.

Also see *Rex v. Bilborough, Mountsorrell, &c. &c.* same title, Arts. 111, 112.

26. The age of the party contracting to serve seems to have formed no ground of distinction in these cases (*); and it seems to have been considered equally immaterial, whether it were agreed that the master shall find diet, washing, and lodging (a), or the party find himself (b), without wages (c), or that he should receive wages (d), or have a portion of his earnings in lieu thereof (e), or in case of absence allow a deduction of wages (f).

* 1 Nolan, 488—*Rex v. Burbach, ante.* (a) *Rex v. Whitehead Canonorum, ante.* (b) *Rex v. Little Bolton, &c. ante.* (c) *Rex v. Skinfield, ante.* (d) *St. Peters v. All Saints, Hereford, ante.* (e) *Rex v. Little Bolton, and Rex v. Eccleston, ante.* (f) *Rex v. Portsea, Bur. S.C. 834.*

III. Time and Place of Inhabitaney.

27. An apprentice must reside 40 days under the indentures as an apprentice, in order to gain a settlement; but no subsequent disqualification by means of a certificate, cancelling the indentures, &c. after such time has elapsed, can affect the settlement. *Misenden v. Grimsfield*, Fo. 157. ii. 385. *Rex v. Clythydon*, ii. 433. *St. Cuthbert's v. Westbury*, ii. 434.

28. The 40 days need not be successive; and in one case where the pauper had lived six years of the apprenticeship, and, as was stated, "up and down three quarters of a year with his master;" the court held that there was room to intend from this that he had resided with his master 40 days. *Rex v. Cirencester*, ii. 386.

29. Inhabitaney at different periods, although a new settlement have intervened, may be connected so as to make 40 days' residence under indentures; and the settlement, in such case, shall be in the parish in which the apprentice lodged the last night. *Rex v. Sandford*, ii. 391.

30. Therefore if an apprentice live with his master 40 days in A., then 40 days in B., and then one day in A., he is settled in A. *Rex v. Brighton*, 5 T. R. 188. ii. 393.

31. The court alluded upon the last occasion to the cases of *Rex v. St. George's, Hanover Square*, and *Rex v. Fremington*, which seemed *contra*, but observed, that more modern decisions were uniformly against the doctrine of those cases; *Lord Kenyon*, however, intimated, that had the thing been *res integra*, and no determination to the contrary, his judgment would have been different. *ibid*.

32. Where the pauper was on shipboard during great part of his apprenticeship, but resided in S. the first 14 days, and so many days after at different intervals as made up 40 days, he was held settled in S. *Rex v. Gainsboro', Burr. S. C.* 586.

33. Where a female apprentice removed with her mistress into a different parish, where her mistress afterwards lived with her son-in-law as a lodger, without gaining any settlement in the parish, yet it was held that the apprentice gained a settlement therein by inhabiting under the indentures. *Stoke Fleming v. Berry Pomeroy*, ii. 387.

34. If the service be in one parish and the pauper reside in another, the settlement is in that where he lodges. *Rex v. Castleton*,

ii. 590. *St. John the Baptist v. St. James*, ii. 387. *Rex v. Stratford*, *Supp.* 159. 11 *E. R.* 176.

35. "The statute says that apprentices gain a settlement by binding and inhabiting, not by binding and service." *By Lee, C. J. in Rex v. St. Peter's on the Hill*, ii. 388.

Notwithstanding this *dictum*, however, see the case itself where it is stated that the pauper, being bound an apprentice, and serving in *A.*, lodged in *B.*, and that the order removing him from *B.* to *C.* (where he had a previous settlement by hiring and service) was affirmed.

36. In the case of *Rex v. St. Olave's Jewry*, ii. 385, where a boy was bound apprentice to a cobbler, who rented a stall in the parish of *St. Olave*, but lodged at nights in the parish of *St. Giles*, and the apprentice lodged with his father in the parish of *Whitechapel*, it was held that he could not gain a settlement in *St. Olave's*, for the cobbler was not an inhabitant there by virtue of his stall; nor in the parish of *St. Giles*, for the apprentice never lodged there; nor in the parish of *Whitechapel*, for though he inhabited there, yet it was not in pursuance of his master's business under the indentures; for the residence must be connected with the service, and at all events the apprentice must still remain under the controul of the master.

37. Where the apprentice of a seafaring man lived at his house in *A.* in the day-time, but lay every night on board his master's vessel in the parish of *B.* he gained no settlement in *A.*, because a man can only be said to inhabit the place in which he lies or lodges; nor in the parish of *B.* where it did not appear that his residence on board the ship was to watch or to do some other service on board for and on account of his master. *St. Mary Colechurch v. Radcliffe*, ii. 386.

38. But where the apprentice of a captain of a ship, belonging to *Bridport*, served his master on board the ship by residing and lodging therein while she lay in the harbour for the purpose of taking care of the ship, and preventing the goods on board from being stolen or damaged, it was held, that, as his residence was not casual or accidental but serviceable to his master, he gained a settlement thereby in *Bridport*. It was expressly stated in the case that the harbour or basin was the home of the vessel, and with the parish of *Burton Bradstock*. *Rex v. Burton Bradstock*, ii. 389.

39. So a sailor boy who hired himself by the year to the boat-

swain of the Chatham Hulk, and laid and victualled continually on board in the river Medway, while she lay at her moorings swinging round with the tide, was held, by such residence, to gain a settlement in the parish in which the hulk was stationed, and not in that in which his master lived on shore. *Rex v. Friendsbury*, ii. 283.

40. So where the apprentice to a captain of a ship in the coal trade, after having served three years, made his last voyage from Topsham to Shields, and from thence to Poole, where he remained upwards of 40 days, and slept every night during that time on board the ship as it lay along-side the quay in the port of Poole; it was held that he thereby gained a settlement in Poole; for this is not a casual or accidental residence, but a residence in the actual employ and service of his master in his trade and business, which in its nature required a shifting residence. *Rex v. Topsham*, 7 E. R. 460, i. 722.

41. A master mariner having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or to let him go back to school, and the apprentice said he would go back to school and learn navigation, which he accordingly did, and resided there above 40 days: held that such residence was not a residence under the indentures, and that he did not thereby gain a settlement. "I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort; it must be either actually or constructively going on during the absence of the apprentice from the master. Here the service did not continue while the apprentice was at school." By Bayley, J. *Rex v. St. Mary, Bredin*, 2 B. & A. 382. Supp. 293.

42. By an indenture of apprenticeship, it was stipulated that the master should provide meat, &c. during the term, except in the winter seasons, when the ship to which the apprentice belonged should be laid by unrigged, during which time the apprentice was to be maintained by himself or friends, the master paying a compensation—Under this stipulation the apprentice, during the winter, resided with his parents in the township of B. for more than 40 days, not doing any work for his master during such residence: the court said this case was stronger than that of *St. Mary, Bredin*, (last art.), for here there was a distinct stipulation in the indenture, by which the master dispensed with the service during the winter season, the period of residence at Brotton; that the residence was not at all connected with the service; and that, upon the principle

of the last-mentioned case, no settlement could be gained under such circumstances. *Rex v. Brotton*, 4 B. & A. 86.

43. Again, an inhabitancy in a particular parish, by reason of sickness, will not gain a settlement. Thus, if an apprentice, after a residence of 40 days, fall sick, and, on account thereof, go home to his father's house in a different parish, his settlement is in the parish where his master lives, although he continue more than 40 days at his father's house, and although, at the time of his so going home, the indentures were given up. *Rex v. Tichfield*, ii. 597.

44. For the residence of an apprentice with his father, mother, grandmother, or other relation or person, in a different parish from his master on account of illness, though with the consent of the master, is not referable to the apprenticeship so as to gain him a settlement in such parish; and the statute 3 W. 3. c. 11. which directs that if any person shall be bound an apprentice and inhabit in any parish, such binding and inhabitancy shall be adjudged a good settlement, &c. must be understood of an inhabitancy referable in some way to the apprenticeship. *Rex v. Barmby in the Marsh*, 7 E. R. 581. i. 721.

45. A case was referred to, when the last mentioned decision took place, (*Rex v. Charles*, ii. 413.,) where a parish apprentice, having resided with his master two years, was then turned over to a person in another parish, where he resided more than 40 days; but, on his becoming a cripple, was sent back to his original master, who sent him to board in his parish with his grandmother, where he resided above 40 days, unable to serve his master, and was then discharged by the sessions; the court held that he gained a settlement by this last residence of 40 days. "If the residence were not casual, which in this case it was not, it has been often said that the labour and service of apprentices is the consideration of the settlement, but that is not true in a thousand instances; it is the residence without any service that does it, if the master be privy and consenting to it." By *Aston, J., Willes and Ashurst, J. assenti.*

46. But an apprentice, who went to lodge at his mother's in an adjoining parish, in order to have his thumb cured of a disorder, but who, during such time, went almost every day to his master's, and was sometimes employed by him for three or four hours at each day in going errands, &c., although unable to work at his trade in consequence of his complaint, was held to gain a settlement in the parish where he so resided with his mother, since he continued still in the service of his master, although lodging with his mother: and

by *Le Blanc, J.* "While an apprentice continues serving under the indenture, all the cases agree that his settlement is in the parish where he lodges, and not in that where the service is performed."

Rex v. Stratford upon Avon, 11 *E. R.* 176. *Supp.* 159.

47. In another case, where a parish apprentice and his master, being both on the permanent staff of the local militia, in consequence of that circumstance resided together, and the apprentice continued to serve his master in *B.* for 40 days, the court held this residence sufficient to confer a settlement, notwithstanding they were both under the control of superior officers the whole time. *Rex v. Chelmsford*, 3 *B. & A.* 411.

48. An apprentice, after serving most of his time with his master in *S.* obtained a subsequent settlement in *H.* by serving another master there for 40 days by the direction of his first master—Afterwards, without the knowledge of his first master, or any intention of returning into his service, he lodged for one night in the parish of *S.*, and then went and worked in a third parish for a month, until the expiration of his term: the court held that this was a mere casual residence, and not under the indenture, and that it could not be coupled with the previous residence at *S.*, so as to fix the settlement there. *Rex v. Smarsden*, 13 *E. R.* 452. *Supp.* 160.

49. Upon another occasion, where an apprentice, at weekly wages, worked and slept as his master's works in *C.* on all days but Saturdays and Sundays, when he slept, with his master's consent, in *R.*, which he continued to do till the Saturday before Shrove-Tuesday (having the night before slept in *C.*), when he received his wages, and never returned to the service, sleeping that and the following night in *R.*, but had not formed any express determination not to return when he left the works on the Saturday, nor could fix any precise time when he did so determine; the court held that his settlement was in *C.*, the service having ended when he quitted on Saturday; and that, therefore, since there was no residence *under the indentures* on the Saturday, no settlement could be gained by it. *Rex v. Ribchester*, 2 *M. & S.* 135. *Supp.* 162.

50. It seems scarcely necessary to observe, that a settlement cannot be gained by apprenticeship in an extra-parochial place. *Clerkenwell v. Bridewell*, ii. 384.

his time, it was held a good service under the indenture he gained a settlement in the parish in which he inhabited his second master. *St. Olave's v. Allhallows*, 8 Mod. 164. ii.

53. So where a parish apprentice, after a service with his first master, was, by parol agreement, hired out to a second master in a different parish, where she resided and worked 40 days previous to the expiration of the apprenticeship, the first master receiving her wages, and providing her with a dwelling, it was held that her settlement was under the indenture in the second parish. *Rex v. St. George's, Hanover Square*,

54. The master of a parish apprentice, not having work to employ her, consents to her hiring herself to another master in a different parish, with whom she resides for a season and until within eight days of the expiration of her apprenticeship she returns to her first master; she gains a settlement in the second parish. *Rex v. Fremington*,

55. But it was held that an infant parish apprentice could not gain a settlement under the indentures, by a hiring to a second master, upon a supposed discharge of the indenture agreement between the master and the apprentice, since the apprentice could not consent to being discharged from the indenture without the consent of the master was not to the particular service, but a general consent, and founded on a misapprehension as to the discharge. *Austrey*, ii. 410.

56. The master of a parish apprentice, after a service

ment with another person, and the consent of the master is not implied by his knowing where the apprentice resides. *Rex v. Ideford*, ii. 415.

57. An apprentice working with several masters, under a general licence by the first master to serve where he would, gains no settlement thereby. *St. Luke's v. St. Leonard's*, ii. 411.

58. An infant parish apprentice was bound to a widow in the occupation of a farm, until he should attain the age of 24 years, and after he had served about six years, she quitted the farm to her son, with whom the apprentice continued to live for several years, and then applied to his master to leave the service; the master told him he might go where he pleased, and he accordingly went to the next statute fair, and hired himself as a servant; this is not a service under the indentures. *Notton v. Roystone*, ii. 412.

59. Where the master of an apprentice told him he had no further occasion for him, and he might go where he pleased, and the apprentice hearing of another master, was going to him; and being met by his original master, and asked where he was going, answered that he was going to Underhill, his new master, to which the master replied, he might go there or where he pleased, this was held not to be such a particular assent of the original master to the service with Underhill as would enable the apprentice thereby to gain a settlement, though the indentures were neither delivered up nor cancelled. *Rex v. Crediton*, 1 E. R. 59. ii. 426.

60. So where an apprentice, being about to marry, told his master that he wished to provide and work for himself, to which the master consented, and said he might do the best he could for himself, but nothing was said about the indentures, and they were not in fact delivered up or cancelled, but he afterwards engaged to work with another master, who told the original master that he had got the apprentice at work, to which the original master answered, "I am glad of it, he was a bad lad, and I could make nothing of him;" it was held not such a consent to the particular service with the second master as would confer a settlement. *Rex v. St. Helen Stonegate*, ii. 429.

61. The master of several apprentices, upon his quitting business, proposed to assign them all, without mentioning names or number, to J. S., but no assignment was ever made; the pauper, one of the apprentices, was hired by J. S. afterwards as a servant, for 51 weeks, and her former master, on meeting her, expressed his approbation of her having gone into the service of J. S.; the

10 Geo. 3. c. 27. by which it is enacted that no man
an apprentice under the 43 *Elix. c. 5.* shall be bound
apprentice for a longer term than until he shall attain
twenty-one) was bound to serve as a parish apprentice
four, and served until nearly twenty-one, when his m
about to quit his residence told him that he might g
liked and shift for himself, but that he might return if h
obtain a situation—Upon this the pauper left; the inde
not given up nor cancelled, and nothing was said a
Within four months of his coming of age the pauper bo
as an apprentice to a person at Okehampton: his fa
party to the indenture, but no communication took pla
first master; there was a service under the last indent
whole period engaged for: but the court held that no
was gained by it, since the mere parol consent to the a
go where he would by no means dissolved the relatio
been created by deed. *Rex v. Bow*, 4 *M. & S.* 383. *m*

63. But where the master died, and, after the app
finished all the work then on hand, the mistress told h
must not stay with her, that there was no more work
that he might go where he thought proper; and acc
apprentice went home to his father for the remainder
it was held that he gained a settlement in the parish i
master lived. *Rex v. Chirk*, ii. 391.

64. A parish apprentice whose indenture is delivered
master, and all interest in the apprentice relinquished

66. If a master agree with his apprentice to furnish him with a loom, and permit him, on the payment of 1s. a-week, to work for himself, a service under this separation with another master in a different parish is a service under the indentures, although the apprentice marry in the interval *Rex v. Offerton*, ii. 414.

67. But where an apprentice, bound for seven years to *A.* served him in his house between five and six years, and afterwards, for the remainder of the term, resided in his mother's house, having agreed with his master that he should be at liberty to work for whom he pleased, paying 2s. a-week to his master—the master, occasionally during the time, giving him work, for which he was not paid, the court held that this was not a continuance of the service to *A.* for seven years under the indentures. *Rex v. Inman*, 4 B. & A. 55.

68. A parish apprentice, bound to *A.* served four years under the indentures, but *B.*, having failed, told him that he might go to his father, and upon application by the father of the apprentice, gave up the indenture, having made crosses upon it as a token that he resigned all right to the apprentice, and promised the person to whom the latter was about to serve as apprentice that he would never reclaim him; the court held that this amounted to an express consent to the second service, and that the apprentice gained a settlement under the indenture. *Rex v. Langham*, ii. 417.

69. The consent of the master, however, to the second service needs not be express; it may be implied from circumstances, as from giving the pauper a character. *Rex v. St. Mary, Lambeth*, ii. 419.

70. But a mere recommendation to another person is not sufficient, particularly where the indentures were given up by the master to the apprentice, by which the latter was left to do as he pleased. *Rex v. Sandford*, ii. 420.

71. If however, an apprentice's first master give him leave to get another master, and recommend him to a particular person in the same trade, who makes an agreement with him accordingly, a service with such second master for two months previous to the first master's delivering up the indentures, gains a settlement under the indentures. *Rex v. Holy Trinity, Minories*, ii. 423.

72. So such a recommendation is sufficient although the master and the apprentice had previously agreed, that, upon the payment of a certain sum, the indentures should be cancelled. *Rex v. Chipping Warden*, 1 E.R. 285. ii. 404.

tishill, but never paid his original master the guinea; sufficient to support the inference that the original assented to the particular service, and as the guinea was the indentures remained in force. *Rex v. Shebbear*, 1 L 427.

74. And it is sufficient although the consent of the original master be not given until the service with the second master commenced; thus where *B.* the master of an apprentice wrote a written paper, signifying that he was at liberty, and he hired himself to *C.* who soon after was told by *B.* that he had an apprentice of his, but that he was welcome to take him and might have his indentures when he pleased; this was held to be quite a sufficient consent to confer a settlement upon the apprentice. *Rex v. Bradstone*, ii. 422.

75. In another case the master and apprentice agreed that the latter should be at liberty to serve whom he pleased, for one guinea a-year during the term of apprenticeship; the master refused to deliver up the indentures; the pauper went of himself to *S.* and, whilst in that service, had more than ordinary satisfaction with his master, who said it was a good place, and expressed a hope that he would continue in it; and on a subsequent occasion said he would look out for the indenture, and deliver it up; the court held that the apprentice gained a settlement by that service. *Rex v. Bradninch*, ii. 418.

76. Where consent is given by the original master to

of an apprentice was not considered as a strictly legal transaction, because the person of a man was not strictly and legally nable, but that it had been an equitable construction that if an apprentice has lived 40 days under an assignment he thereby gain a settlement because of the consent. See *acc. v. Stockland*, ii. 416. and *St. Petrox v. Stoke Fleming*, ii. 407. such an assignment could not strictly be made except in don by custom.

8. It seems that a settlement may be gained under such assignment, although the original indentures were voidable. *St. Petrox v. Stoke Fleming*, *ib.*

9. It seems also that the assignment should recognize the terms of service contained in the first indenture; for where a parish apprentice was bound by her original master by a new indenture of apprenticeship, without reference to or recognition of the original indenture, which still subsisted in law, it was held that she did not gain a settlement by serving her new master, as upon a constructive notice of the original master under the first indenture. *Rex v. Astowe*, 11 E. R. 95. *supp.* 8.

O. Consent to the new service may be given by the executor of the former master. *Rex v. Stockland*, ii. 416.

1. If the consent of the executrix of the first master be in writing, it must be stamped as an agreement, to render the service to the second master effectual. *Rex v. St. Paul's, Bedford*, 6 R. 452. ii. 425.

See statutory regulations on the death of the first master, so far as parish apprentices are concerned, under title "Apprentice," p. 230-4. (stat. 56 Geo. 3. c. 139. there by mistake called c. 134.)

V. Of the Effect of Certificates.

2. An apprentice assigned by a certificate-man to a master in another parish, gains a settlement. *Rex v. Petham*, ii. 431.

3. Where A. was bound a parish apprentice to B. a certificated man and was assigned by him to C. a freeman, living in the same parish, with whom he lived more than 40 days, it was held that he gained no settlement thereby; for the 12 Ann. c. 18. expressly "that no apprentice of any person who is certificated shall gain a settlement by virtue of such apprenticeship or binding;" and if he could not have gained a settlement under B., he cannot do it under C. the legislature merely intending that no act whatever of that sort done by a certificated man should help to burthen the parish to which he is certificated. *Rex v. Hinckley*, ii. 437.

84. An apprentice who has served three years out of four to a freeman cannot gain a settlement by serving the remainder of time to a certificate-man, although in a different parish, and with the consent of his original master. *Romsey v. St. Michael's*, ii. 434.

85. So if an apprentice be bound to a freeman, and before service of 40 days under the indentures the master receive a certificate, the apprentice, by the subsequent service, cannot gain a settlement. *St. Cuthbert's v. Westbury*, ii. 434.

86. But an apprentice who inhabits with his master for 40 days under the indentures, gains a settlement, although his master afterwards obtain a certificate. *Rex v. Clythdon*, ii. 433.

87. The son of a certificated person cannot gain a settlement in the certificated parish by apprenticeship, though the father, to whom the certificate was given, died six months before the apprenticeship expired. *Rex v. Alfreton*, 7 T. R. 471. ii. 445.

88. But if a certificated man have a son born under the certificate, and the certifying parish bind out such son as an apprentice in a third parish, the son, by serving under the indenture, gains a settlement in such third parish, notwithstanding his father's certificate. *Rex v. Silton*, ii. 32. 1 Wils. 184.

89. And the son of a certificated person who is bound an apprentice in the certificated parish, may, on his indentures being cancelled, bind himself apprentice in a different parish; and, if he gain a settlement under the second indentures, he may afterwards gain a settlement by hiring and service in the parish to which his father was certificated. *Rex v. Weddington*, ii. 436.

90. An apprentice to the son of a certificated person cannot gain a settlement by such apprenticeship, if his master continue to reside in the certificated parish with his mother after his father's death as part of her family, although he be of age, and carry on business for himself; such circumstances not amounting to emancipation. *Rex v. Sowerby*, 2 E. R. 276. ii. 446.

91. Nor can an apprentice, after the husband's death, to the wife of a certificate man (although such certificate were granted subsequently to the marriage) gain a settlement. *Rex v. Hampton*, 5 T. R. 266. ii. 440.

92. An apprentice to a certificate man in *A.* removed voluntarily with his master to *B.* where he continued 40 days; he afterwards married a woman living in *C.* but continued to serve his master by day in *B.* and to lodge with his wife in *C.* until the term of his apprenticeship expired: it was held that he gained a settlement notwithstanding the certificate. *Rex v. Spotland*, ii. 435.

93. A person, certificated from *A.* to *B.*, went to reside in *C.* upon a freehold which he had there purchased; the pauper was bound apprentice to him for seven years, which he served, during the residence of his master in *C.*, and the court held, that he gained a settlement in *C.*; and they said that the statutes 9 & 10 *W.* 3. c. 11. and 12 *Anne*, c. 18. did not extend to a third parish. *Rex v. Bishopside*, ii. 433.

94. If the certificate be discharged or never delivered to the parish officers, it can have no effect in defeating any settlement by apprenticeship. *Rex v. St. Peter's in Derby*, ii. 437. 1 *T. R.* 218. *Rex v. Wensley*, ii. 439. 5 *T. R.* 154.

VI. *Of Discharging the Indentures.*

95. The mutual delivering up of indentures amounts to canceling them. *Rex v. Titchfield*, ii. 397.

See further title "*Apprentice*," *Divs. III. VI. VIII.*

VII. *Of the Evidence of a Settlement by Apprenticeship.*

96. The fact of an apprenticeship must be proved by the production of the indenture; and an unstamped indenture is, to this effect, no indenture. *Rex v. Holbeck*, ii. 449. *Cuenden v. Leyland*, i. 545.

97. The indenture must be proved, as in all other cases, by the subscribing witness. Upon one occasion, in order to prove an indenture of apprenticeship, the appellants, having failed to prove the death of the subscribing witness, and not being able to produce him, proposed to call the pauper himself to prove his own execution of the indenture, and that of the other parties to it; the sessions rejected the evidence; and the court held that it was properly rejected, saying that the rule, which requires the subscribing witness to be first called, or his absence satisfactorily accounted for, was "inexorable" and universal. *Rex v. Harringworth*, 4 *M. & S.* 350. *Supp.* 221.

98. An unstamped indenture cannot be given in evidence; yet, if the execution be proved, the court will presume that it was duly stamped in the absence of proof to the contrary. *Rex v. Llanvari Dyffryn Clwyd*, i. 549, &c. *Rex v. East Knoyle*, i. 547.

99. And in one case where the sessions presumed that an indenture of apprenticeship executed 30 years before, and under which the apprentice had regularly served his time for seven years, when

riod. *Rex v. Long Buckby*, i. 708. 7 E. R. 45.

100. An agreement between a first and second master given in evidence unless stamped; and if it be in writing no parol evidence of the contents is admissible. *Rex v. Bedford*, 6 T. R. 452. ii. 455.

101. But indentures may be given in evidence without less time than the 5 Eliz. requires; or which are without native, "marriage," or where the parties are infants such case not *ipso facto* void, but voidable only by the party. *St. Nicholas*, ii. 363. *Rex v. St. Petros*, ii. 368. *Petros*, ii. 377.

102. Where indentures are proved to have existed, and been lost or destroyed, other evidence of the binding is produced. *Rex v. East Knoyle*, ii. 448. *Rex v. Castleton*, 236. ii. 454. See also *St. Helen's v. St. Saviour's*, ii. 449.

103. So also where an attesting witness to a deed denies it executed. *Talbot v. Hudson*, 7 Taunt. 251. 2 M.

104. In a late case, in order to establish a settlement of tithes, it was proved that the indenture was only of one year, that, upon application to the pauper, who was then ill and afterwards, to know what had become of it, he declared that the indenture expired, it was given to him, and he burnt it since; it was also proved, that inquiry was made of the master, who said that she knew nothing about it: this was sufficient to entitle the party to give parol evidence.

apprentice and had served out his time, which fact was proved by his wife on her examination before the sessions, these facts afforded sufficient evidence of an apprenticeship. *Rex v. St. John, Bath*, ii. 450.

In a case where an unstamped written agreement subsisted between the parties, and the sessions received the parol evidence of the master explanatory of the terms on which he lived and worked for his master, the court held that the parol evidence, not being intended to contradict the written agreement, but to ascertain an important fact collateral to the written instrument, by which to explain the intention of the parties, was properly received in evidence. *Laindon*, 8 T. R. 379. ii. 455.

Where a pauper had served a master under unstamped articles of agreement, to work with him for three years at certain rates of wages, and under certain covenants, after which he had agreed to serve his master for four years longer without coming to a new agreement, the court held, that although such unstamped writing could not be received in evidence for the purpose of proving the agreement between the parties, yet that the sessions might look at it for the purpose of seeing when it ceased to operate, in order to guide them on receiving parol evidence of service for four years at wages, from whence they might presume a contract. *Rex v. Pendleton*, 15 E. R. 449. *supp.* 38.

Rex v. Stoke Golding, title "Overseers," Art. 203.

Where an unstamped indenture of apprenticeship recited a premium of 10*l.* had been paid, but added that it was paid out of a charitable donation fund belonging to the parish, and the apprentice being called, proved that the premium had been paid by the parish officers, who told him at the time of paying it, that it was a money, held that, the fact of payment being proved, the indenture was valid. *Rex v. Skeffington*, 3 B. & A. 382.

Where *H.* was bound apprentice in 1764 in *C.*, and upon the death of his master, in 1769, was assigned by the widow, by indenture upon the back of the indenture, whereby she *acquitted and released over her apprentice I. G.* for all the remainder of his apprenticeship, and *I. G.* served under such assignment in *R.*, the parish had for the last seven years regularly relieved the father *I. G.* whilst residing in another parish, the court held, that

this was evidence from which the sessions ought to have presumed that the widow was executrix, and capable of assigning the apprenticeship, and that *I. G.* had acquired a settlement in *R.* And the sessions having drawn a contrary conclusion, the court quashed the order. *Rex v. Barnsley*, 1 *M. & S.* 577. *supp.* 39.

110. It seems that it is not necessary to prove the execution of the indentures by the master. *Rex v. Ribchester*, 2 *M. & S.* 135.

111. It was held in one case that, if an indenture of apprenticeship came out of the hands of the opposite party, after notice to produce it, the party calling for it may have it read without proof of the execution. *Rex v. Middlezoy*, ii. 452. 2 *T. R.* 41.

112. But in a later case, *Lord Ellenborough*, *Ch. J.* said, "that the case of *Rex v. Middlezoy* had been overruled, and that the production of an indenture in pursuance of such notice did not supersede the necessity of proving the execution of it as in ordinary cases. And *Lawrence, J.* said that *Lord Kenyon* had decided a case relating to a will upon this principle. *Gordon v. Secretan*, 8 *E. R.* 548. See also *Pearce v. Hooper and others*, 5 *Taunt.* 62.

113. The master of an apprentice, on being examined at the sessions, needs not answer the question, "whether a parol agreement was not made between him and the father of the apprentice at the time of signing the indenture, that he (the master) should not pay for the first two years of the time certain monies per week which were covenanted in the indenture to be paid to the master," since it tends to make him contradict his own deed. *Rex v. Porteus*, i. 551.

114. An apprentice who has run away from his master, and is apprehended and carried before a justice of the peace, under the statute of 6 *Geo. 3. c. 25.* cannot give in evidence, that the indentures were not conformable to the directions of 3 *Eliz. c. 4.* *Rex v. Evered*, i. 534.

OF SETTLEMENT BY PAYMENT OF PUBLIC RATES.

- I. WHO MAY SO GAIN A SETTLEMENT, AND OF THE KIND OF RATES.**
II. OF THE ASSESSMENT AND PAYMENT.

I. Who may so gain a Settlement, and of the kind of Rates.

1. By 3 *Will.* 3. c. 11. s. 6. if any person inhabiting in any parish shall, for himself, and on his own account, be charged with and pay his share towards the public taxes or levies of the said parish, he shall thereby gain a settlement, though no notice be delivered pursuant to the statutes of 13 and 14 *Car.* 2. c. 12. the 1 *Jac.* 1. c. 17. and 3 *Will.* 3. c. 11. s. 3.

2. But by the 9 and 10 *Will.* 3. c. 11. certificated persons cannot gain this species of settlement.

3. By 9 *Geo.* 1. c. 7. s. 6. no persons, who shall be taxed to the scavenger, or to the repairs of the highway, shall, by paying the same, gain any settlement.

4. By 43 *Geo.* 3. c. 161. s. 59. persons assessed to and paying the duties on houses and windows, or any of the assessed taxes, shall not thereby gain a settlement.

5. And now by 35 *Geo.* 3. c. 101. s. 4. it is provided, That no person or persons whatsoever, who shall come into any parish, township, or place, shall gain a settlement in such parish, township, or place, by being charged with and paying his, her, or their share towards the public taxes or levies of the said parish, township, or place, for and on account or in respect of any tenement or tenements, not being of the yearly value of 10*l.*

6. See *dict.* by Lord Kenyon, Ch. J. in *Rex v. Islington*, 1 *E. R.* 283. that it was clear that the legislature meant that no person should gain a settlement thenceforwards by being rated and paying, the words "who shall come into any parish," meaning who shall inhabit there; and that it was intended to make an end of this head of settlement in future.

7. The payment of the land-tax, though not a parochial tax, yet, when paid in a parochial limit, is a public tax within the meaning of the act. *Rex v. Blood*, Comb. 410. but see *dict.* by Lord Kenyon Ch. J. *Rex v. Weobley*, 2 *E. R.* 68.

8. Therefore where the husband of the pauper was a tide-waiter, who was rated to, and paid the land-tax on his salary, it was held that he thereby gained a settlement, although the amount of what he paid was afterwards repaid to him by the collector of the customs. *Oakhampton v. Kenton*, *Burr. S. C. 5*.

9. See also *Rex v. Chidingfold*, *Burr. S. C. 415*.; but see *Rex v. Weobley*, and *Rex v. Armouth*, *post. Arts. 45, 46*.

10. A tax for the repair of a county bridge is not a public tax within the statute. *Rex v. St. Michael's, Cornhill*, *Sett. & Rem. 1*.

11. A rigger, living at Sheerness, who pays the sixpence a-quarter, which is stopped out of the pay of the people belonging to Sheerness dock-yard, for the relief of the poor of the vill of Sheerness, does not thereby gain a settlement, for this is not a public tax within the meaning of the act. *Rex v. Friendsbury*, *Burr. S. C. 644*.

b. Of the Assessment and Payment.

12. The party in order to gain a settlement must be assessed as well as pay. *Rex v. Sarratt*, *Burr. S. C. 75*. *Rex v. Bramshaw*, *ib. 98, &c. &c.*

13. But if there be an assessment, this seems sufficient, although it will be illegal and void. *St. Giles's, Cripplegate, v. St. Mary Newington*, 1 *Sess. Ca. 22*.

14. Thus where a person was assessed to a church-rate upon householders only, and not upon the parishioners at large, the court would not allow the settlement of a person who had paid under such assessment, to be defeated merely because the rate was laid too narrowly. *Rex v. St. Bees*, 9 *E. R. 203. supp. 132*.

15. The word taxes in the statute, in its proper signification, means such as are chargeable on the tenant, and therefore the tenant, or person occupying the house, ought to be rated. *Rex v. Lancaster*, 19 *Vin. 4. 384*.

16. But if the assessment be made on the house, and not expressly on the person occupying it, it is sufficient. *St. Mary le Moor v. Heavytree*, *Salk. 478*.

17. Therefore, where a person lived at a place called "Roscoe's tenement," and was assessed to the poor-rates under the title of, "occupier of Roscoe's," it was held a sufficient assessment on the person of the tenant. *Rex v. Brickhill*, 8 *Mod. 58*.

18. So also where a tenant was rated in this manner to the land-tax, "Occupier late widow Hooper's, now John Hind's," and to

the poor's rate in this manner, "Occupier of the late John Hooper's tenement," it was held a sufficient rating of John Hind, the tenant. *Rex v. Uffculme, Burr. S. B.* 430.

19. So also under an assessment made in this manner, "Thomas Clifford or tenant," if the succeeding tenant pay the taxes thus assessed, and take a receipt for them from the overseers in his own name, it is equivalent to naming him in the rate; for it is not necessary to the gaining of this kind of settlement, that the occupier should be expressly named. *Painswick v. Cirencester, Burr. S. C.* 465.

20. Therefore an assessment of the poor's rates in these words only, "late Lowbridge's house, &c." is an assessment on the tenant, whatever his name may be. *Ashley v. Walsall, Cald.* 35.

21. So also an assessment on the tenant, "occupier, late Mr. Hipplesey's, &c." is an assessment on the tenant. *Rex v. Chew Magna, Cald.* 365.

22. Where an assessment was made in the name of a former occupier, who, to the knowledge of the parish officers, was dead, but the poor rate continued in his name, the succeeding occupier, by paying the rate thus assessed, shall gain a settlement. *Rex v. Heckmondwike, Cald.* 103.

But see *Kinver v. Kingswinford, Fo.* 120. where the court held that a settlement was not gained by A., who paid the rate, the name of B., the former occupier, still continuing on the parish books.

23. It is not necessary that the tenant should be rated by name; if he be virtually rated, and pay, it is sufficient. *Rex v. Stanlake, Burr. S. C.* 627. *acc. Rex v. Painswick, ib.* 465.

24. And under certain circumstances, the court will even intend that the tenant was rated. Thus, where the collectors demand payment of the rate from the tenant, and, on his refusing to pay, on account of his house being included in another levy, they shew him a paper writing, and read over to him the sum he is to pay and, on his continuing to refuse payment, they levy the money by distress, and he afterwards pays the rates for the house, the court, until the contrary be clearly proved, will intend that the tenant was rated. *Rex v. St. Issey, Burr. S. C.* 826.

25. So also a tenant whose name has been once introduced upon the land-tax rate, though it be taken off in the same year, in consequence of his poverty, and at his own request, yet is still considered as rated, if they put no other person on the rate, notwith-

pear that either of them are expressly rated, if the tenant pays the tax, he shall thereby gain a settlement. *Rex v. Mitcham*,

28. But although the land-tax is a tenant's tax as between the landlord and the public, yet if the names of both landlord and tenant are put upon the rate, and the receipt given to the tenant states that the sum paid was assessed upon the landlord, it is a rate upon the landlord, and the tenant, by paying it, does not acquire a settlement. *Rex v. St. James's Bury, Cald.* 385.

29. If an assessment be made of the land-tax, and, in the landlord's books, the name of the landlord be placed under the heading "Landlords rated," and the name of the tenant under the heading "Names of Occupiers," the assessment is made upon the landlord, and not upon the tenant. *Rex v. Carshalton, Burr. S. C.*

30. Same point. *Rex v. St. John, Southwark, Cald.* 62.

31. So also where a house was known by the name of "Waynllwyd," and the land thereto belonging was rated to the parish by the name of "Waynllwyd," but always paid by the landlord, and repaid by the tenant, and therefore the overseers ignorantly assessed the tenant, it was held, that this was a rate upon the landlord, and not upon the tenant. *Rex v. Llanagamarch, 2 Term Rep.* 628.

32. And where *A.* being a certificated pauper living in the parish of *B.* was thus assessed, "*A.* to bring security for one shilling and sixpence," which sum *A.* paid to the churchwarden, but which was not figured in the rate book until it was received, it was

a fact, the Court of King's Bench is precluded from considering whether they have drawn a right conclusion. *Rex v. Folkstone*, 3 Term Rep. 506. and see *Rex v. Bainham*, 5 T. R. 240.

35. It is not necessary that the assessment should be for a whole year; the being assessed to two quarters is enough. *Bramley v. Armley*, Burr. S. C. 75.

36. Nor is it necessary that the estate assessed should be such as will entitle the person occupying it to gain a settlement by estate. *Rex v. Worth*, Burr. S. C. 90.

37. The person assessed must also pay the tax to gain a settlement. *Soloughtonham v. Worplesdon*, Fo. 128. acc. *Talbourn v. Boston*, Salk. 523, &c. &c.

38. Therefore an assessment of the poor's rate on the landlord of a house and payment by the tenant will not gain a settlement, though the payment were made by the tenant on the demand of the overseers. *Rex v. Sarratt*, Burr. S. C. 73.

39. Even although the person assessed be the overseer himself who made the rate, and received the money from the tenant. *Rex v. Bramshaw*, Burr. S. C. 98.

40. So where, after the death of the landlord, an assessment of the poor's rate was made thus, "Occupier of the late Mr. Hippeasley's, &c." and the pauper, who was one of the personal representatives of Mr. Hippeasley, received from the tenant a third of the rent in his own right, and twice paid the rate to the overseers, it was held he did not gain a settlement; for the rate is on the occupier, and the payment by the landlord. *Rex v. Chew Magna*, Cald. 365.

41. So where a father was assessed in his own name and right, and gave up the house to his son, on condition of being maintained by him, and the son took possession of the house, and paid the taxes, it was held that he gained no settlement, for, though the son paid, the father was rated. *Rex v. Lower Walton*, Burr. S. C. 100.

42. But where a son went to live with his mother as part of her family in a parish where she had a house and a small parcel of land, which she occupied herself, and while he lived with his mother he was in two rates on houses and lands only, and not on personal estate, and thereby charged as occupier, it was held he gained a settlement by paying such rates, although the land belonged to his mother. *Stapleton v. Stoney Stanton*, Burr. S. C. 649.

43. And where the tenant is rated, and also pays, he thereby gains a settlement, although the money be repaid to him by his

land-tax for his salary, which was in fact paid by the the customs, without any deduction from the salary, did gain a settlement. *Rex v. Weobley*, 2 E. R. 68. See *v. Kenton, ante, Art. 8.*

46. Where, however, a custom-house officer was so in fact, paid the rate himself, although the money was to him beforehand for the purpose, or allowed to him at the collector, it was held that he gained a settlement if when he was so rated and paid. "The case of *Rex v. J* distinguished from the other cases by *Lord Kenyon*, be the officer did not pay the tax mediately or immediately he did in fact pay it himself; and as to his being reimbursed, all the cases agree that that makes no difference is not contradicted by *Rex v. Weobley*." By *Lord E Ch. J. Rex v. Armouth*, 8 E. R. 383. *Supp.* 131.

47. If a tenant be rated, and abscond, and his land the collectors to levy it by distress lest he should lose and on their going to the premises a friend of the tenant's a guinea, out of which they take the amount of the equal to payment by the tenant, and he thereby gainment. *Rex v. Bridewater*, 3 Term Rep. 550.

48. If an artificer in his majesty's service be rated by and pay the tax to which he is so rated, he thereby gainment, notwithstanding 3 Will. & Mary, c. 11. s. 4. *Mary, Whitechapel, Cald.* 24.

for each overseer to add such names to his book as ought to be inserted in the general rate, such addition not being in fact made till the next year, but in the meanwhile the general rate is from time to time ordered to be collected with the additions, a person paying the rate whose name is afterwards added in the overseer's book, does not thereby gain a settlement; but if his name had been so added before he paid the rate, he would gain a settlement. *Rex v. Edgbaston*, 6 T. R. 540.

51. If the parishes of a city be incorporated for the purpose of maintaining the poor, a person who resides in one parish, and is rated in another, does not, by paying such rate, gain a settlement in either parish. *Rex v. St. Michael at Thorn in Norwich*, 6 T.R. 536.

SETTLEMENT BY RELIEF.

1. Where a case from the sessions only stated the bare fact of a pauper having received relief from a particular parish, it was held that this was not even *prima facie* evidence of a settlement there, since he might have been relieved as casual poor, which the overseers were bound to do if necessary, whether the pauper were settled in the parish or not. *Rex v. Chadderton*, 2 E. R. 27, ii. 654.

2. And although such relief be afforded many times. *Rex v. Chatham*, 8 E. R. 498. *supp.* 33.

3. But if the relief be afforded by the overseers of A. to the family of the pauper while residing in B., this is evidence of the settlement being at that time in A. *Rex v. Wakefield*, 5 E. R. 335. ii. 15.

4. And where there was evidence of a certificate having been granted by A. to the pauper's grandfather, it was held that this was rebutted by shewing repeated subsequent acts of relief afforded by B. to the pauper in his family, while residing in C. and in D. *Rex v. Stanley cum Wrenthorpe*, 15 E. R. 350. *supp.* 37.

5. The fact, however, of relief having been afforded by a parish, amounts to no more than an expression of the opinion of the parish officers relieving that the party is settled there. By *Lord Ellenborough, Ch. J.* *Rex v. Maidstone*, 12 E. R. 550.

OF THE
SETTLEMENT OF FOREIGNERS,
AND MISCELLANEOUS.

1. A foreigner may gain a settlement, as by renting a tenement. *Rex v. Eastbourne*, 4 E. R. 103.

2. And it seems that if, after having gained a settlement, he marry, his wife shall have such settlement as in other cases. *St. Giles v. St. Margaret's, Sess. Ca.* 97.

3. It seems that an infant under seven years of age may gain a settlement, as by residing for 40 days in a parish from whence he is during that time irremovable. See *Rex v. Hasfield*, ii. 462.

4. Soldiers cannot gain a settlement by hiring and service. *Rex v. Beaulieu*, 3 M. & S. 279. *Supp.* 270.

5. Nor a deserter. *Rex v. Norton*, 9 E. R. 206.

6. But a soldier may gain a settlement by renting a tenement. *Rex v. Brighton*, 1 B. & A. 276. *Supp.* 263.

7. It may be a question whether a man attainted can gain a settlement after attainder. By Lord Kenyon, in *Rex v. St. Mary Cardigan*, 1 T. R. 116.

ORDER OF SUSPENSION.

See titles, "*Removal of the Poor*," Div. X.—"*Appeal*," Div. IX.—"*Relief*," Div. III. Art. 23.

VAGRANTS.

See under title, "*Maintenance of Relations*," 7 Jac. 1. c. 4. and 5 Geo. 1. c. 8. (*Arts.* 41. 42.)

- I. IDLE AND DISORDERLY PERSONS.
 - II. ROGUES AND VAGABONDS.
 - III. INCORRIGIBLE ROGUES.
 - IV. APPREHENSION OF SUCH PERSONS, AND PRIVY SEARCH.
 - V. EXAMINATION AND PUNISHMENT.
 - VI. PASSING VAGRANTS, CHARGES OF, HOW TO BE DEALT WITH WHEN ARRIVED, AND OF SCOTCH AND IRISH VAGRANTS.
 - VII. HINDERING EXECUTION OF THE VAGRANT ACTS, AND PENALTY FOR LODGING VAGRANTS.
 - VIII. CHILDREN BORN IN VAGRANCY.
 - IX. LUNATIC VAGRANTS.
 - X. APPEAL AND COSTS.
 - XI. EXCEPTION OF PARTICULAR FRANCHISES.
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Idle and disorderly persons. 1. By 17 Geo. 2. c. 5. all persons who threaten to run away and leave their wives or children to the parish; and all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two magistrates without bringing a certificate from the parish or place whereunto they belong; and also all persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work, in the parishes or places where they then are; and also all persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell, shall be deemed idle and disorderly persons; and any justice may commit such offenders (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one or more credible witness or witnesses) to the *house of correction*, there to be kept to hard labour for any time not exceeding one month: and any person may apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather arms in the parishes or places where they dwell; and if they shall *resist or escape* from the person apprehending them, they shall be subject to the *same punishment as rogues and vagabonds* are made liable to by this act: and the said justice may by warrant under his hand and seal, order any overseer

of the poor of the parish or place where such offender shall be apprehended, to pay the sum of 5s. to any person or persons in any such parish or place so apprehending them, for every offender so apprehended; which sum shall be allowed to such overseer in his account, he producing the justice's order, and a receipt under the hand of the person or persons to whom such sum was paid: but if such overseer shall neglect or refuse to pay the said sum, the said justice, on oath thereof made, may by warrant under his hand and seal order the same to be levied by distress and sale of the goods of such overseer; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such overseer, who in such case shall not be allowed the sum so levied in his account.

2. The commitment must be for a definite time, not exceeding a lunar month (28 days). *Baldwin and Wife v. Blackmore*, Burr. 596. *Rex v. Hall*, ib. 1636. *Lacon v. Cooper*, 6 T. R. 225.

3. Such commitment is in execution, and the party cannot be bailed; and where, in one instance, other magistrates had from corrupt motives discharged a person so committed, the court granted an information against them. *Rex v. Brooke*, 2 T. R. 190.

4. The commitment must be preceded by a conviction. *Ibid.* and *Rex v. Rhodes*, 6 T. R. 220.

5. It must show also that the person convicting had authority to convict; the words "brought before me, and convicted," are not sufficient. *Rex v. York and Fielding*, Burr. 2684.

6. By 32 Geo. 3. c. 45. s. 8, if it be made appear to any two justices, that any poor person shall not use proper means to get employment, or, if he is able to work, by his neglect of work, or by spending his money in alehouses or places of bad repute or in any other improper manner, shall not apply a proper proportion of the money earned by him towards the maintenance of his wife and family, by which wilful default or neglect they, or any of them, shall become chargeable to their parish or township, he shall be considered as an idle and disorderly person, and be subject to such punishment, and in such manner as is directed for idle and disorderly persons by the aforesaid act.

Rogues and Vagabonds. 7. By 17 Geo. 2. c. 5. s. 2. all persons going about as patient-gatherers, or gatherers of alms, under pretences of loss by fire or other casualty; or going about as collectors for prisons, gaols, or hospitals; all fencers and bearwards; all common players of interludes; and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, not being authorized by law; all minstrels*, jugglers; all persons† pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending

* By s. 29. nothing in this act shall prejudice the heirs of John Dutton of Dutton, late of the county of Chester, as to any privileges which they use or ought to use within the said county.

By 1 Geo. 4. c. 116. so much of 1 and 2 Ph. & M. is repealed as made it capital for gypsies to remain one month in this kingdom.

to have skill in physiognomy, palmestry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive and impose on any of his Majesty's subjects; or playing or betting at any unlawful games or plays*; and all persons who run away and leave their wives or children, whereby they become chargeable to any parish or place; and all petty chapmen and pedlars wandering abroad, not being duly licensed or otherwise authorized by law; and all persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, mariners, seafaring men†, or pretending to go to work in harvest; and all other persons wandering abroad and begging, shall be deemed rogues and vagabonds within the true intent and meaning of this act.

By s. 3. Provided always, That this act, or any thing herein contained, shall not extend, or be construed to extend, to soldiers wanting subsistence, having lawful certificates from their officers or the secretary-at-war, or to mariners or seafaring men licensed by some testimonial or writing under the hand and seal of some justice of the peace, setting down the time and place of their landing or discharge, and the place to which such soldiers or mariners are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of such their passage while they continue in the direct way to the place to which they are to pass, and during the time so limited‡; or to any person or persons going abroad to work at any lawful work in the time of harvest, so as he, she, or they carry with him, her, or them a certificate in writing, signed by the minister and one of the churchwardens or chapelwardens, or one of the overseers of the poor for the time being, of the parish, chapelry, or place where they shall respectively inhabit, declaring that he, she, or they hath or have a dwelling-house, or place there, in which he, she, or they inhabit.

8. By 23 Geo. 3. c. 88. if any person be apprehended, having upon him or her any picklock, key, crow, jack, bit, or other implement, with intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or outhouse, or shall have upon him or her any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person or persons; or shall be found in or upon any dwelling-house, &c. [as before], or in any inclosed yard or garden or area belonging to any house, with an intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond within 17 Geo. 2. c. 5.

9. A commitment under this act must state that the party had the implement, &c. charged, upon him at the time of his apprehension. *Rex v. Brown*, 8 T. R. 26.

* Playing at bowls is not within the stat. *Rex v. Clarke*, *Comp.* 35. *Paley*, 85. 110.

† By 52 Geo. 3. c. 31. the stat. 39 Eliz. c. 17. against vagrants so pretending is repealed.

‡ By 32 Geo. 3. c. 45. s. 7. it is enacted, that every soldier and mariner wandering abroad, or begging, shall be deemed a rogue and vagabond; but see title *Militia and Soldiers*, Div. I. as to the protection of soldiers in respect of vagrancy.

10. By 39 and 40 Geo. 3. c. 87. s. 12, reciting that whereas divers ill-disposed and suspected persons, and reputed thieves, frequent the river Thames, and the quays and warehouses near and adjoining thereunto, and the avenues to the same quays and warehouses, and the streets and highways leading thereto, with intent to commit felony on the persons and property of his Majesty's subjects there being; it is enacted, That any constable or surveyor appointed under the authority of this act, within the limits aforesaid, may apprehend every such person, and carry him or them before any of the said special justices to be appointed as aforesaid, or any other justice of the peace: and if it shall appear before the said justice, upon the oath of one witness, that such person or persons is or are a person or persons of evil fame, and a reputed thief or thieves, and such person or persons shall not be able to give a satisfactory account of himself or themselves, and if his or their way of living; and it shall also appear to the satisfaction of the said justice that there is just ground to believe that such person or persons was or were on or in the said river, quays, or warehouses, or in such avenue, street, or highway as aforesaid, with such intent as aforesaid, every such person shall be deemed a *rogue and vagabond* within the intent and meaning of 17 Geo. 2. c. 5. Provided, That if any person shall think himself aggrieved by the judgment of such justice as aforesaid, such person may appeal to the next general and quarter sessions of the peace to be held for the county or place wherein the cause of complaint shall have arisen, such person, at the time of his conviction, entering into a recognizance, with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and abide the further judgment of the justices at such sessions; and in case such conviction shall be affirmed at such sessions, the said justices may adjudge such person to be a *rogue and vagabond*, and proceed against such person in the same manner as they might have done if such rogue and vagabond had been committed to the house of correction until such general or quarter sessions: Provided always, That no person convicted under this act shall thereby become liable to any other punishment than imprisonment to hard labour for a term not exceeding six months, taking into the computation any actual imprisonment which such person shall have suffered by his commitment until such sessions.

11. By 54 Geo. 3. c. 37. s. 18, reciting that divers ill-disposed persons and reputed thieves frequent places of public resort, the avenues thereto, and the streets and highways, and places adjacent, with intent to commit felony on the persons and property of his Majesty's subjects there being; it is enacted, That any constable, headborough, patrol, watchman, or other person, may apprehend every such suspected person or reputed thief, and convey him before any justice of the peace; and if it shall appear before the said justice, upon the oath of one creditable * witness, that such person so brought before him by such constable, &c., or by any other person whatever, as well within the said counties of Middlesex and Surrey, or elsewhere, is a person of evil fame and a reputed thief, and such person shall not be able to give a satisfactory account of him or herself, and of his or her way of living, and it shall also appear to the satisfaction of the said justice that there is just ground to believe that such person was in such public place of resort, &c. as aforesaid, with such intent as aforesaid, every such person shall be deemed a *rogue and vagabond* within 17 Geo. 2. c. 5.

* &c. —

sessions for the said county, [liberty, or city, *as the case may be,*] then and there to remain to be further dealt with according to law: Provided that no person convicted under this act shall be deemed liable to punishment by whipping.

14. It seems that an infant under seven years shall not be declared a rogue and vagabond, but removed to his place of settlement as other persons not vagrants. *See 5 Chetw. Burn's Just.* 493.

Incorrigible Rogues. 15. By 17 Geo. 2. c. 5. all end gatherers offending against 13 Geo. 1. c. 23. for the better regulation of the woollen manufacture, being convicted of such offence; and all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice, or to be examined upon oath before such justice, or refusing to be conveyed by any such pass as is hereinafter directed, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment; and all rogues or vagabonds who shall break or escape out of any house of correction before the expiration of the term for which they were committed by virtue of this act; and all persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the true intent and meaning of this act.

Also, all persons convicted of a third offence against 6 Geo. 3. c. 48. and 15 Car. 2. c. 2.; or of a fourth offence against 45 Geo. 3. c. 66. for the protection of woods, &c. and persons who forfeit the recognizance to appear at the sessions under 54 Geo. 3. c. 37. *See Art.* 13.

Apprehending and privy Search. 16. By 17 Geo. 2. c. 5. any person whatsoever may apprehend any person offending against this act, and convey or cause to be conveyed such offender to some justice, the persons so apprehended to be proceeded against in such manner as is hereinafter directed: and in case any constable, or other such officer, shall refuse or neglect to use his best endeavours to apprehend or convey to some justice any such offender, it shall be deemed a neglect of duty in such constable or officer, and he shall be punished in such manner as is hereinafter directed: and in case any other person being charged by any justice so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable or such other officer, or to carry such offender before some justice where no constable or other such officer can be found, such person so offending as aforesaid, being thereof convicted upon view or by the oath of one witness before one justice shall forfeit the sum of 10*s.* to the use of the poor of the parish or place wherein such offence shall be committed; to be levied by distress and sale of the offender's goods, by warrant from any justice, and the overplus (if any), after the charges of such distress satisfied, shall be returned to such offender: and in case any person not being a constable, or such other officer, shall apprehend any such rogue or vagabond, and shall deliver him or her to a constable, or other such officer, or shall convey or cause him or her to be conveyed to some justice according to the directions of this act; or if any constable or other such officer shall so apprehend and convey such rogue or vagabond, such justice may

† It seems that obtaining money under a forged order of this kind is within 30 Geo. 2. c. 24. *See Rushworth's case,* 1 *Chetw. Burn. Just.* 475.

reward any such constable or other person, by making an order under hand and seal upon the high or chief constable †, to pay the sum of 10*s.* to the person so apprehending him or her, within one week after demand and producing such order, and upon his giving a receipt for the same; and the same shall be allowed or paid by the treasurer of the county, riding, division, or liberty, to such high or chief constable on his passing his accounts, and delivering such order and receipt, and also his own receipt for the same to such treasurer; and the said justices at the general or quarter sessions shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid: and in cities, boroughs, towns corporate, and other places where there are no high or chief constables, such petty constables and other officers shall pay or retain such reward as aforesaid, and be allowed what they shall so pay or retain by virtue of this act in their respective accounts, upon their producing and delivering up the like vouchers: and in case any high or chief constable, or where there is no high or chief constable, such petty constable or other officer, shall refuse or neglect to pay such reward on demand, it shall and may be lawful for such justice by warrant under hand and seal, to levy the sum of 20*s.* by distress and sale of the goods of such officer, and therewith to allow to the person intitled thereto the said reward of 10*s.* and such other recompence for his trouble, loss of time, and expenses, as the said justice shall think fit, and the overplus (if any) shall be returned to such officer upon demand.

17. By 32 Geo. 3. c. 45. s. 2. no justice shall order any reward to be paid to any constable or person for apprehending any rogue or vagabond, until such rogue or vagabond shall have been punished as by this act (see *Art. 30. post.*) directed, and until the examination required by 17 Geo. 2. c. 5. be actually transmitted to the next general or quarter sessions, there to be filed and kept on record.

18. By 17 Geo. 2. c. 5. s. 6. the justices for every county, riding, city, borough, town corporate, division, or liberty, or any two of them, shall, four times in the year at least, or oftener (if need be), meet in their respective divisions, and by their warrant command the constables or other peace officers of every hundred, parish, town, and hamlet, in their several divisions, who shall be assisted with sufficient men of the same places, to make a general privy search in one night, throughout their several and respective limits, for the finding and apprehending of rogues and vagabonds; and every justice of the peace shall also, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the constable or other officer of such place, to search for or apprehend such rogues and vagabonds; and such rogues and vagabonds as they shall find and apprehend upon such searches, they shall cause to be brought before any justice or justices of the peace of the same county, riding, city, borough, town corporate, division, or liberty.

Examination and Punishment. 19. By 25 Geo. 2. c. 36. s. 12. for the better discovering and bringing to justice thieves, robbers, and other persons maintaining themselves by pilfering and defrauding mankind.

kind; it is enacted, that any two of his Majesty's justices in any county, city, or liberty, in case any person apprehended upon any general privy search, or by virtue of any special warrant, shall be charged before them with being a rogue and vagabond, or an idle and disorderly person, or with suspicion of felony, (although no di-

rect proof be then made thereof,) may examine such person upon oath, not only as to the parish or place where he was last legally settled, but also as to his means of livelihood; the substance of which examination shall be put into writing, and be subscribed or signed by the person so examined; and the said justices shall likewise sign the same, and transmit it to the next general or quarter sessions for the same county, city, or liberty, there to be filed, and to be kept on record: and if such person shall not make it appear to such justices, that he has a lawful way of getting his livelihood, or shall not procure some responsible house-keeper to appear to his character, and to give security for his appearance before such justices, at some other day to be fixed for that purpose (in case the same shall be required), may commit such person to some prison or house of correction for any time not exceeding six days; and in the mean time may order the overseers of the poor, or one of them, of the parish or place in which such person shall be apprehended, to insert an advertisement in some public paper, describing such suspicious person, and any thing or things which shall have been found upon him or in his custody, and which he shall be suspected not to have come honestly by, and mentioning the place to which such person is committed, and specifying the time and place when and where such person is to be again brought before them to be re-examined; and if no accusation shall be then laid against him, then such person shall be discharged, or otherwise dealt with according to law.

20. By 17 Geo. 2. c. 5. s. 7. where any rogues or vagabonds apprehended by any constable, or such other officer or person as aforesaid, or upon such search as aforesaid, shall be brought before any justice he is required to inform himself by the examination upon oath of the person apprehended, or of any other person of the condition and circumstances of the person so apprehended, and of the parish or place where he or she last legally settled; the substance of which examination shall be put into writing, and be signed by the person so examined; and the said justice shall likewise sign the same, and transmit it to the next general or quarter sessions for the county, riding, city, borough, town corporate, division, or liberty, there to be filed and kept on record; and such justice is required to order all such persons so apprehended to be publicly whipped by the constable, petty constable, or tythingman, or some other person to be appointed by such constable, petty constable, or tythingman, of such parish or place where such persons were apprehended; or to order such persons to be sent to the house of correction, there to remain until the next general or quarter sessions, or for any less time, as such justice shall think proper.

21. With regard to commitments under this section, see *Rex v. Rhodes, &c. ante, Art. 4. Rex v. Cooper*, 6 T.R. 309. decided upon the principle which governed *Rex v. Rhodes* *.

See also 32 Geo. 3. c. 45. s. 1. *post*, as to the whipping, &c. of vagrants passed under 17 Geo. 2. c. 5.

22. By 32 Geo. 3. c. 45. s. 3. whenever any female shall be guilty of any offence, for which she shall be convicted as a rogue and vagabond, or incorrigible rogue, before any justice or the general or quarter sessions,

* By 27 Geo. 3. c. 11. wherever a justice has power to commit to the common gaol, he may commit to the common gaol or house of correction.

in no case whatever such justice, or court or general or quarter sessions, shall inflict the punishment of whipping upon such female rogue and vagabond or incorrigible rogue.

23. By 17 Geo. 2. c. 5. s. 9. where any offender against this act shall be committed, as aforesaid, to the house of correction, there to remain until the next general or quarter sessions; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person a rogue or vagabond, or an incorrigible rogue; they may if they think convenient order such rogue or vagabond to be detained and kept in the said house of correction to hard labour for any further time not exceeding six months, and such incorrigible rogue for any further time not exceeding two years, nor less than six months from the time of making such order of sessions; and during the time of such person's confinement, to be corrected by whipping, in such manner, and at such times and places within their jurisdictions, as according to the nature of such person's offence, they in their discretion shall think fit; and such person may (if the justices at the said sessions shall think convenient) afterwards be sent away by such pass, *mutatis mutandis*, as aforesaid; and if such person being a male, is above the age of twelve years, the justices at their sessions may and they are hereby empowered, at any time before he is discharged from the house of correction, to send him to be employed in his Majesty's service, either by sea or land, if they shall judge proper; and in case any such incorrigible rogue, so ordered by the said general or quarter sessions to be detained and kept in the said house of correction, shall, before the expiration of the time for which he or she shall be so ordered to be there detained and kept, break out, or make his or her escape from the said house of correction, or shall offend again in like manner; in every such case, every such person shall be deemed and taken to be guilty of felony, and being legally convicted thereof, shall and may be transported for any time not exceeding seven years, in the same manner as by the laws now in being other felons may be transported.

24. In a case which occurred upon the last mentioned section of the statute the court held that the sessions must specially direct in which service, whether sea or land, the vagrant shall be employed. *Rex v. Patchett*, 5 E. R. 339.

25. It was also held that the word "such person" referred to "any offender against the act," described at the beginning of the clause, who should be committed to the sessions. *Ibid*.

26. In another case upon the same section it was held, that a person committed as a rogue and vagabond under 23 Geo. 3. c. 88. who breaks gaol, and on being committed as an incorrigible rogue under 17 Geo. 2. c. 5. breaks gaol a second time, and then commits a new act of vagrancy as a rogue and vagabond, may be indicted for felony, under 17 Geo. 2. c. 5. s. 9. and transported. *Ballie's case*, 1 Leach, 396.

27. By 13 and 14 Car. 2. c. 12. s. 23. the justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be duly adjudged to be incorrigible.

28. By 17 Geo. 2. c. 5. s. 32. reciting that whereas doubts have arisen, and may arise, where authority is given to any justice or justice,

commit offenders to the house of correction for offences cognizable before them, out of the general or quarter sessions of the peace, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly directed, limited, or appointed; it is therefore enacted, that where any offenders shall be committed as aforesaid, by virtue of any law now in being, or hereafter to be made, and the time and manner of their punishment is not expressly limited and appointed, the said justice or justices shall commit such offender to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law; and two justices (of which the justice who committed such offender to be one) may discharge the said offender before the said sessions if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him in custody for such time as they shall see fit not exceeding three months*.

Passing va- 29. By 17 Geo. 2. c. 5. s. 7. (see the early part of the clause, *ante*, Art. 20.) after such whipping or confinement, such *grants, &c. and* justice or justices may, if they think convenient, by a *pass* under hand and seal, in the manner and form hereafter *general expen-* directed, cause such persons to be conveyed to the place *ces attending* of their last legal settlement; but if it cannot be found, *them, and how* then to the place of their birth; or if such persons, or any *to be disposed* of them, be under the age of fourteen years, and have any *of where sent.* father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden, chapel-warden, or overseer of the poor of such parish, town, or place. (*For the form of the pass see the statute.*)

30. By 32 Geo. 3. c. 45. s. 1. when any justice shall order to be conveyed by a pass under his hand and seal any rogue or vagabond, according to the provisions of 17 Geo. 2. c. 5. such rogue or vagabond shall be either publicly whipped or be sent to the house of correction, there to remain until the next general or quarter sessions, or for any such less time as such justice shall think proper; provided that such less time shall be at the least for the space of 7 days, and that such justice shall certify in the pass by which such person shall be ordered to be conveyed, that such person has been actually publicly whipt, or confined in the house of correction for at least the space of 7 days: provided also, that no person shall be so whipt or imprisoned, and conveyed by a pass as a rogue or vagabond, who shall not have committed an act of vagrancy within the true intent and meaning of the said act, and who shall not have been convicted thereof.

31. By 17 Geo. 2. c. 5. s. 8. such justice or justices shall make or cause to be made a duplicate of such pass and examination, and sign the same; and shall afterwards transmit the duplicate of the said pass annexed to the examination, to the next general or quarter sessions, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass, and send it with the same; and the said pass, examination, and duplicates thereof, shall and may be read in any court of record in England, Wales, or the Town of Berwick-upon-Tweed, as evidence.

32. By s. 10. to prevent unnecessary expence in the passing or conveying of rogues, vagabonds, and incorrigible rogues, it is enacted, that the justice

* See observations upon this clause, 5. Chetw. Burn's Just. 505.

or justices of the peace, who shall make the pass, shall at the same time, with the said pass, cause likewise to be delivered to the constable, or other officer appointed to convey them, a note or certificate, ascertaining how they are to be conveyed, by horse, cart, or foot, and what allowance such constable or other officer is to have for conveying them (according to the rates or allowances appointed by the general or quarter sessions, as is hereinafter directed) in the form, or to the effect following.

33. By s. 11. The constable or other officer, who shall receive such pass and certificate, shall convey, or cause to be conveyed, the person or persons named in such pass, in such manner, and in such time, as by the same pass shall be directed, *the next direct way* to the place where he, she, or they are ordered to be sent, if such place be in the same county, riding, division, corporation, or franchise, where the said person or persons were apprehended; but if the place to which the person or persons so apprehended is or are to be sent, lies in some other county, riding, &c. he shall deliver the said person or persons to the constable or such other officer of the first town, parish, or place, in the next county, &c. in the direct way to the place to which such person or persons is or are to be conveyed, together with the said pass and duplicate of examination, taking his receipt for the same; and such constable or other officer shall, without delay, apply to some justice in the same county, riding, division, corporation, or franchise, who shall make the like certificate as before (*mutatis mutandis*), and deliver it to the said constable or other officer, who shall with all speed convey the person or persons unto the first parish, town or place, in the next county, &c. in the direct way to the place to which such person or persons is or are to be conveyed; and so in like manner from one county to another, till they come to the place to which such person or persons is or are sent; and the constable or other officer, who shall deliver such person or persons to the churchwarden or other person ordered to receive them by such pass, shall at the same time deliver the said pass, with the duplicate of examination, taking their receipt for the same; and if the churchwarden or other person, who shall receive any person so sent, shall think the examination to be false, he may carry the person so sent before some justice, who, if he see cause, may commit such person to the house of correction till the next quarter sessions, and the justices there, if they see cause, may deal with such person as an incorrigible rogue; but the person so sent shall not be removed from the place to which sent, but by order of two justices, in the same manner as other poor persons are removed to the place of their settlement.

34. By s. 16. The justices of any county, riding, city, borough, town-corporate, division, or liberty, may at the general or quarter sessions from time to time limit and direct what rates and allowances per mile, or otherwise, shall be made for the passing, conveying, or maintaining of rogues, vagabonds, or incorrigible rogues, to be passed or conveyed as aforesaid; and may likewise make such other orders, rules, and directions for the more regular proceeding or acting therein, within their respective limits and jurisdictions, as they in their discretion shall think proper; which rates, allowances, orders, rules, and directions shall from time to time be observed and submitted to by all justices, constables, officers, and other persons within the same limits and jurisdictions respectively*.

* 32 Geo. 3. c. 45. s. 6. is a similar clause to this.

35. By s. 17. In case any petty constable, or other such officer of any parish or place, shall bring to any high or chief constable any such certificate as aforesaid, as shall be given him by any justice or justices of the peace for the proper county or place, ascertaining how and for what rates or allowances he shall be required to convey any rogues, vagabonds, or incorrigible rogues as aforesaid, together with a receipt or note from any constable or other officer or person to whom the person or persons so to be conveyed was or were delivered, the said *high or chief constable* shall and may pay unto such petty constable or other officer, the rates or allowances ascertained in and by such certificate, and no more, taking from such petty constable or other officer such certificate, and his receipt for the same; and the said *high or chief constable* shall be allowed the same by the treasurer of the county, riding, liberty, division, corporation, or franchise, on his passing his accounts, upon his producing and delivering up such certificate and receipt, and giving his own receipt for the same to such treasurer; and the justices at the general or quarter sessions shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid: and in case any high or chief constable shall refuse or neglect to pay the said petty constable, or other officer or person, the rates or allowances ascertained in and by such certificate and receipt, on demand, any justice, by warrant under hand and seal, may levy double the sum ascertained by such certificate, by distress and sale of the goods of such high or chief constable, and thereout to allow the said petty constable, or other officer or person, the sum ascertained in and by such certificate and receipt, and such other recompence for his trouble, loss of time, and expences as the said justice or justices shall think fit; and the overplus (if any) shall be returned to such high or chief constable upon demand; and in cities, towns-corporate, and other places, where there is no high or chief constable, such petty constables or other officers shall be allowed what they shall pay pursuant to the directions of such certificate, in their respective accounts, upon their producing and delivering up such vouchers; or in case any governor or master of a house of correction shall deliver such certificate and receipt to any treasurer as aforesaid, such treasurer shall pay the rates therein ascertained to such governor or master of the house of correction, taking his receipt for the same, which shall be allowed to such treasurer in his accounts on his producing and delivering up such vouchers.

36. By s. 18. in case any such petty constable or other officer, or governor or master of any house of correction, shall counterfeit any such certificate, receipt, or note, or make or knowingly permit to be made any alteration in any such certificate, receipt, or note, he shall forfeit 50*l.*; and in case he shall not convey, or cause to be conveyed, the persons to the place where they ought to be conveyed, or shall not deliver them to the proper person; or if any constable, or other officer or person, shall refuse to receive any such person sent to them, or to give a receipt or note as before directed; in any of the said cases, the constable, or other officer or person, shall forfeit 20*l.* to be levied by distress and sale of the offender's goods, by warrant or order of the justices, where such offence shall be committed, at their general or quarter sessions; one moiety to be paid to the person or persons who shall first make information against any such offender, and the other moiety to be paid to the treasurer of the county or place, to be applied by him as part of the public stock; and the overplus (if any), after such forfeitures levied, and the charges of

and expressed in the said warrant, *and convey him*, her, or them to such place in Ireland, the Isles of Man, Jersey, Guernsey, or Scilly, as such ship, vessel, or packet boat shall be bound to, or shall arrive at; and for the *charges* thereof such master shall take, and the *constable* or person who serves him with the said warrant shall pay him such rate per head, as the justices at their quarter sessions shall from time to time appoint, for every such vagrant so brought and delivered to him; and such *master* shall on the back of the said warrant *sign a receipt* for the money so paid, and also for the vagrant or vagrants so brought and delivered; which warrant so endorsed shall then be produced to the justice who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, in such manner as by this act the money to be paid for conveying vagrants from county to county is directed; and every master of such ship, &c. neglecting or *refusing to receive on board*, or to transport such vagrant or vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit 5*l.* to the use of the poor of the parish or place where the offence shall be committed; to be levied by distress and sale of the said ship, or any goods within the same, by warrant under the hand and seal of any justice for the same county, city, or town corporate, returning the overplus upon demand, after the said penalty and charges of levying the same are satisfied.

45. By s. 15. provided that no master of any such packet-boat, ship, or vessel, shall be compelled to take on board more than one vagrant for every 20 tons burthen of any such boat, &c.

See further regulations as to foreigners vagrants under 59 Geo. 3. c. 12. s. 33, 34. title "*Removal*," Arts. 11. *et seq.*

Children of Vagrants. 46. By 17 Geo. 2. c. 5. s. 24. reciting, that whereas persons are often found offending against this act, having children with them, whom they bring up in a dissolute course of life, it is enacted, that if any such child, above the age of seven years, be committed to the house of correction as aforesaid, the justices at the quarter sessions may, if they see convenient at any time before such child is discharged, order such child to be placed out in such manner as they think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of 21 years, or for any less time, as to the said justices shall seem meet: and if any offender, who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such offender shall be deemed an incorrigible rogue.

47. By s. 25. where any woman wandering and begging is delivered of a child in a parish or place to which she does not belong, whereby they become chargeable to the same, the churchwardens or overseers of such parish or place may detain such woman in their custody, until they can safely convey her to some justice or justices, who shall examine her, and commit her to the house of correction until the next general or quarter sessions, who may (if they see convenient) order her to be publicly whipt* and detained in the house of correction, for any further time not exceeding six months; and upon application by the churchwardens or overseers of the place where she was so delivered, the justices at such sessions shall

* But see 32 Geo. 3. c. 45. s. 3. *ante.*

for all or any of the purposes aforesaid to be raised in the same manner as rates are directed to be raised by 12 Geo. 2. c. 29.

40. See, in case of sickness or inability to travel, title "Removal," *Art.* 126; also same title (*Arts.* 129, 131.) 49 Geo. 3. c. 124. ss. 1, 3.

41. By 17 Geo. 2. c. 5. s. 12. any justice before whom any vagrants shall be carried may order such vagrants to be searched, and their *bundles to be inspected* by the constable, tythingman, churchwarden, or overseer of the poor, in the presence of the said justice; and if it shall appear that any such vagrant shall be found to have sufficient wherewithal to pay for their passage, either in the whole or in part, to the parish to which they belong, then the said justice or justices shall order so much of the money to be paid, or other effects found with or upon such vagrants to be sold and employed towards the expence of taking up and passing such vagrants, returning the overplus, after deducting the charges of such sale, to such vagrants.

42. By 17 Geo. 2. c. 5. s. 19. the parish or place to which any rogue, vagabond, or incorrigible rogue, shall be conveyed by pass as aforesaid, shall employ in work, or place in some workhouse or almshouse, the person so conveyed to them, until he, she, or they shall betake themselves to some service or other employment; and in case any such person or persons refuse to work, or shall not betake themselves to some service or employment, the overseers of the same parish or place, or the major part of them, may cause such person to be carried before some justice in order to be sent to the house of correction, there to be kept to hard labour.

See also latter part of s. 11. *ante*, *Art.* 33.

43. By s. 13. the constable or other officer of any parish or place, within the counties of Cumberland, Irish vagrants, Northumberland, Durham, or town of Berwick-upon-
&c. &c.

Tweed, shall, upon any person or persons being delivered to them by a pass and examination, who shall have been apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in Scotland, deliver the said examination to the clerk of the peace for such respective county, to be kept among the records of the sessions of that county, and convey or cause to be conveyed such person or persons with the said pass into the next adjoining shire, stewartry, or place in that part of the united kingdom; and deliver him or her to some constable or other officer of the next parish, district, or place within the said shire, stewartry, or place, taking his receipt for him or her; and such officer shall receive such person or persons, and give such receipt, and dispose of him, her, or them according to law; and in case any such vagrant, after being so sent and conveyed into that part of Great Britain called Scotland, shall, after being so sent as aforesaid, be found wandering, begging, or misbehaving him or herself within England, contrary to the true intent and meaning of this act, every such person so offending shall be deemed an incorrigible rogue, and be punished as incorrigible rogues are to be punished by this act.

44. By s. 14. every master of any ship, vessel, or packet boat, bound for Ireland, the Isles of Man, Jersey, Guernsey, or Scilly, shall, and they, and each of them is and are hereby required, upon warrant to him or them directed under the hand and seal of a justice of the county, town, or place where such ship, vessel, or packet boat shall lie, to take on board the same such vagrant and vagrants as shall be named

and expressed in the said warrant, *and convey him*, her, or them to such place in Ireland, the Isles of Man, Jersey, Guernsey, or Scilly, as such ship, vessel, or packet boat shall be bound to, or shall arrive at; and for the *charges* thereof such master shall take, and the *constable* or person who serves him with the said warrant shall pay him such rate per head, as the justices at their quarter sessions shall from time to time appoint, for every such vagrant so brought and delivered to him; and such *master* shall on the back of the said warrant *sign a receipt* for the money so paid, and also for the vagrant or vagrants so brought and delivered; which warrant so endorsed shall then be produced to the justice who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, in such manner as by this act the money to be paid for conveying vagrants from county to county is directed; and every master of such ship, &c. neglecting or *refusing to receive on board*, or to transport such vagrant or vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit 5*l.* to the use of the poor of the parish or place where the offence shall be committed; to be levied by distress and sale of the said ship, or any goods within the same, by warrant under the hand and seal of any justice for the same county, city, or town corporate, returning the overplus upon demand, after the said penalty and charges of levying the same are satisfied.

45. By s. 15. provided that no master of any such packet-boat, ship, or vessel, shall be compelled to take on board more than one vagrant for every 20 tons burthen of any such boat, &c.

See further regulations as to foreigners vagrants under 59 Geo. 3. c. 12. s. 33, 34. title "*Removal*," Arts. 11. *et seq.*

Children of Vagrants. 46. By 17 Geo. 2. c. 5. s. 24. reciting, that whereas persons are often found offending against this act, having children with them, whom they bring up in a dissolute course of life, it is enacted, that if any such child, above the age of seven years, be committed to the house of correction as aforesaid, the justices at the quarter sessions may, if they see convenient at any time before such child is discharged, order such child to be placed out in such manner as they think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of 21 years, or for any less time, as to the said justices shall seem meet: and if any offender, who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such offender shall be deemed an incorrigible rogue.

47. By s. 25. where any woman wandering and begging is delivered of a child in a parish or place to which she does not belong, whereby they become chargeable to the same, the churchwardens or overseers of such parish or place may detain such woman in their custody, until they can safely convey her to some justice or justices, who shall examine her, and commit her to the house of correction until the next general or quarter sessions, who may (if they see convenient) order her to be publicly whipt* and detained in the house of correction, for any further time not exceeding six months; and upon application by the churchwardens or overseers of the place where she was so delivered, the justices at such sessions shall

* But see 32 Geo. 3. c. 45. s. 3. *ante.*

order the treasurer of the county or district to pay them such a sum of money as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account; and if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act, but the settlement of such woman shall be deemed the settlement of such child.

Lunatics. 48. By s. 20. reciting that there are sometimes persons who, by lunacy or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad, it is enacted that any two justices, where such lunatic or mad person shall be found, may, by warrant under their hands and seals directed to the constables, churchwardens, and overseers of the parish, town, or place, or some of them, cause such person to be apprehended and kept safely locked up in some secure place within the county or precinct where such parish, town, or place shall lie, as such justices shall under their hands and seals direct, and, if such justices find it necessary, to be then chained, if the last legal settlement shall be in any parish, town, or place within such county or precinct; and if such settlement shall not be there, then such person shall be sent to the place of his or her last legal settlement by a pass, *mutatis mutandis*, as aforesaid, and shall be locked up or chained, by warrant of two justices of the county or precinct to which such person is so sent, in manner aforesaid; and the reasonable charges of removing, and of keeping, maintaining, and curing such person during such restraint (which shall be for and during such time only as such lunacy or madness shall continue), shall be paid (such charges being first proved upon oath) by order of two or more justices of the peace, directing the churchwardens or overseers where any goods, chattels, lands, or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands and tenements as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions; but if such person hath not an estate to pay and satisfy the same, over and above what shall be sufficient to maintain his or her family, then such charges shall be paid by the parish, town, or place to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose.

Hindering execution of the act and sheltering vagrants. 49. By s. 22. in case any constable or other officer or governor or master of any house of correction shall be defective, remiss, or negligent in his duty, in the execution of this act, in any case for which no punishment is herein before particularly provided; or in case any person shall disturb or hinder the execution of this act, or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising or assisting to his or her escape, and shall be thereof convicted upon the oath of one witness, before one justice, where such offence shall be committed (which oath the said justice is hereby empowered to administer), the person so offending, for every such offence, shall forfeit a sum not exceeding 5*l.* nor less than 10*s.* to the use of the or of the parish or place where such offence shall be committed; to be levied by distress and sale of the offender's goods, by warrant from such justice, returning the overplus (if any be) upon demand, after the

said forfeiture and charges of making and keeping the said distress shall be satisfied; and if sufficient distress cannot be found, one such justice may commit the person so offending to the house of correction, there to be kept to hard labour for any time not exceeding two months.

50. By s. 23. if any person knowingly permit any such rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his or her house, barn, or other out-house or buildings, and shall not apprehend and carry such rogue, vagabond, or incorrigible rogue before some justice, or give notice to some constable, or other such officer, so to do; such person being thereof lawfully convicted on confession or upon oath of one witness before one justice, where such offence shall be committed, shall forfeit any sum not exceeding 40s. nor less than 10s. one moiety thereof to the informer, and the other to the use of the poor of the parish or place where such offence shall be committed; to be levied by distress and sale of the goods and chattels of such offender, by warrant from such justice, returning the overplus upon demand, after such forfeiture and charges of such distress be satisfied; and if any charge shall be brought upon any parish or place, by means of any such offence, the same shall be answered to the said parish or place by such offender, and be levied by distress and sale of his or her goods and chattels as aforesaid: and if sufficient distress cannot be found, such offender shall be committed to the house of correction by the justice for any time not exceeding one month.

Appeal. 51. By s. 26. any persons aggrieved by any act of any justice out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty, or division, giving reasonable notice, whose order shall be final.

Exception from the operation of the act. 52. By s. 27. Provided that in all cities and towns, where, by virtue of special acts of parliament, the charge of passing vagrants is to be defrayed in other manner than is by this act directed, or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed to the places whither they are to be sent by any person or officer, other than those named for that purpose in this act, such charge shall be defrayed in such cities and towns in like manner as before the making of this act; and the person or officer liable to such service in the said cities and towns, by virtue of the said special acts of parliament, shall continue liable as if this act had never been made; and if any person shall be delivered to a bedel or constable within the city or liberties of the city of London, to be conveyed on, as directed by this act, the said bedel or constable shall not deliver such person in any other precinct within the said city or liberties, but in the next county, as directed by this act.

53 By s. 28. where any persons offending against this act have been committed as aforesaid to the house of correction, there to remain until the next general or quarter sessions, if, upon the examination of the persons so committed as aforesaid, no place can be found to which they may be sent by a pass as aforesaid, the said justices shall at the said sessions order such persons to be detained and employed in the house of correction until they can provide for themselves, or until the justices of the peace, at their general or quarter sessions, can place them out in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within this realm, or his Majesty's colonies or

VESTRIES.

plantations in America, which the said sessions are empowered to do in such manner as they shall think fit.

Protection of persons acting under this statute. 54. By s. 34. if any person shall be sued for any thing done in the execution of this act, such person may plead the general issue and give the special matter in evidence, and if a verdict pass for the defendant, or the plaintiff be nonsuited or discontinue his suit, the defendant shall recover treble costs.

By the same section 13 Geo. 2. is repealed.

see 14 Geo 4 c 64 Addenda ~~EE~~

VESTRIES.

1. By 58 Geo. 3. c. 69. no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, *three days at the least* before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel.

Chairman of Vestries appointed. 2. By s. 2. in case the rector or vicar or perpetual curate shall not be present, the persons so assembled in pursuance of such notice shall forthwith nominate and appoint by plurality of votes, to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be the chairman of and preside in every such vestry; and in all cases of equality of votes, upon any question arising thereip, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book (to be provided for that purpose by the churchwardens and overseers) and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same.

Manner of voting. 3. By s. 3. in all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to 50l. shall be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to 50l. or upwards (whether in one or in more than one sum or charge), shall have and be entitled to give one vote for every 25l. of annual rent, &c. in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the

proportion and amount which shall be borne by him of the joint charge ; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge.

4. By s. 4. when any person shall have become an inhabitant of any parish, or become liable to be rated therein since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

5. By s. 5. no person who shall have neglected to pay any rate for the relief of the poor which shall be due from and shall have been demanded of him, and * shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same.

6. By s. 6. as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct ; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall by the order of any such vestry be directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of a witness, by and before two justices upon complaint thereof to them made, shall for every such offence forfeit such sum, not exceeding 50*l.* nor less than 40*s.* as shall by such justices be adjudged ; and the same shall be recovered by warrant of such justices, in such manner as poor's rates in arrear are to be recovered, and shall be paid to the overseers of the parish against which the offence shall be committed, or to some of them, and be applied towards the relief of the poor thereof. Provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorized to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured, any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper, belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may in every such case be proceeded against in any of his Majesty's courts, civilly or criminally, in like manner as if this act had not been made.

7. By s. 7. all provisions, authorities, and directions in this act contained in relation to parishes, shall extend to all townships, vills, and

* So in the act ; but see *post* art. 20.

places *having separate overseers*, and maintaining their poor separately; and all the directions and regulations herein contained in regard to vestries, shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place, for any of the purposes in this act expressed; and the *notices* by this act required to be given of every vestry may, in places in which there is or shall be *no parish church* or chapel, or *where there shall not be divine service* in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively.

8. By s. 8. *nothing* in this act contained shall extend to *alter the time of holding any vestry, parish, or town meeting* which is by the authority of any act required to be holden on any certain day, or within any certain time in such act prescribed and directed; nor shall any thing in this act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township, or place by virtue of any special act or acts, of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden.

9. By s. 9. and 10. *nothing* in this act contained shall extend to any parish within the city of London, nor to any parish in the borough of Southwark.

10. By s. 11. this act shall extend only to England and Wales; and the same shall be a public act.

11. By 59 Geo. 3. c. 12. s. 1. the inhabitants of any parish, in vestry assembled, *may establish a select vestry* for the concerns of the poor of such parish; and to that end *elect*, in the same or in any subsequent vestry, or any adjournment thereof, so many *substantial householders* or occupiers within such parish, not exceeding the number of *twenty* nor less than *five*, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other *minister* of the parish, and in his absence the curate thereof (such curate being resident in and charged to the poor's rates of such parish), and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first thereto appointed by writing under the hand and seal of one justice, which appointment he is hereby required to make), shall be a select vestry for the management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers) shall be a quorum; and when *any inhabitant elected to serve* in any such select vestry shall, before the expiration of his office, *die or remove* from the parish, or shall become incapable of serving, or shall *refuse or neglect to serve* therein, the vacancy which shall be thereby occasioned shall, as soon as convenient, be filled up by the election, in manner aforesaid, of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until 14 days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner hereinbefore directed; and every such select vestry shall *meet* once in every 14 days, and oftener if it shall be found necessary, in the parish

church, or in some other convenient place within the parish; and at every such meeting a *chairman shall be appointed* by the majority of the members present, who shall preside therein; and in all cases of equality of votes upon any question there arising, the chairman shall have the casting vote; and *every such select vestry shall examine* into the state and condition of the poor of the parish, and inquire into and *determine upon the proper objects* of relief, and the nature and amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and *superintend the collection and administration* of all money to be raised by the *poor's rates*, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall *not* (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices, in the cases hereinafter provided for) give any further or *other relief* or allowance to the poor, *than such as shall be ordered by the select vestry*.

12. By s. 2. when any complaint shall be made to any justice of the *want of adequate relief*, by or on the behalf of any poor inhabitant of any parish, for which a select vestry shall be established by virtue of this act, or in which the relief of the poor is under the management of guardians, governors, or directors appointed by virtue of special or local acts, such justice shall not proceed therein, or *take cognizance thereof*, unless it be *proved on oath* before him, that application for such relief hath been first made to and *refused by the select vestry*, or by such guardians, governors, or directors; and in such case the justice to whom the complaint shall be made may summon the overseers or any of them, to appear before any two justices to answer the complaint; and if upon the hearing thereof it shall be *proved on oath*, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief hath been refused by the select vestry, or by such guardians, governors, or directors, or that such select vestry shall not have assembled as by this act directed, such justices may make an order under their hands and seals, for such *relief* as they think necessary (reference being also had by such justices to the character and conduct of the applicant); provided that in every such order the *special cause* of granting the relief thereby directed shall be expressly *stated*, and that no such order shall be given for or extend to *any longer time than one month* from the date thereof: *provided* that any justice may make an order for relief in any *case of urgent necessity*, to be specified in such order, so as such order shall remain in force only until the assembling of the select vestry of the parish, or of such guardians, governors or directors, as aforesaid, to which such case shall relate.

13. By s. 3. every select vestry, to be established by the authority of this act, shall cause *minutes* to be fairly entered in books, to be for that purpose provided, of all their *meetings, proceedings, resolutions, orders, and transactions*, and of all sums received, applied, and expended by

their direction; and such minutes shall from time to time be *signed by the chairman*, and shall, together with a summary or report of the accounts and transactions of the select vestry, be *laid before the inhabitants of the parish in general vestry* assembled, twice in every year; viz. in March and October, and at such other times as the select vestry think fit; and the minutes, &c. of every select vestry, shall belong to the parish, and be *preserved* with the other books, documents, accounts, and public papers thereof.

14. By s. 4. the churchwardens and overseers shall cause ten day's notice, at the least, to be publicly given, in the usual manner, *of every vestry*, to be holden for the purpose of establishing any select vestry, or of nominating and electing any member thereof, and of every vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall *state the special purpose thereof*.

15. By s. 35. all powers and authorities by this act vested in justices, shall be exercised by such justices within the limits of their respective commissions and jurisdictions, and not elsewhere; and all provisions, clauses, authorities, and directions in this act contained, in relation to parishes shall extend to all townships, vills, and places having separate overseers and maintaining their poor separately; and all acts and duties required or authorized by this act to be done by churchwardens and overseers, may in every parish be performed by the major part of the churchwardens and overseers thereof; and in townships, vills, and places which have no churchwarden, the same may be performed by the overseers thereof, or the major part of them; and all the powers, provisions, and clauses in this act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place, having separate overseers, and maintaining its poor separately, to be held after due and legal notice for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally named.

16. By s. 36. *nothing* in this act contained shall extend to alter or affect, further than is hereby expressly enacted, any of the powers, directions, provisions, or regulations contained in 22 Geo. 3. in or with respect to such *parishes, townships, and places* as have adopted, or as shall adopt and become *subject to the provisions of that act*; nor to alter or affect any of the powers or provisions of any special or local act or acts, for the maintenance, relief, or regulation of the poor, in any city, town, hundred, district, parish, or place, so nevertheless that in every city, &c. such of the clauses, directions, and powers in this act contained, as are not repugnant to, nor incompatible with, the provisions of the said act 22 Geo. 3., or of such respective special or local acts, shall have the like force and effect, and may be adopted and applied in like manner, as in other parishes and places; and nothing in this act shall extend to alter or disturb any select vestry in any parish, established and acted upon by virtue of any ancient usage or custom.

17. By s. 37. the act is only to extend to England.

18. By 59 Geo. 3. c. 85. reciting that it is expedient to amend 58 Geo. 3. c. 69. it is enacted that any person who shall be *assessed and rated for the relief* of the poor in respect of any annual rent, profit, or value arising from any *lands, tenements, or hereditaments situate in any parish* in which any vestry shall be holden under the said recited act, although such person *shall not reside* in or be an inhabitant of such parish, shall

and may lawfully be *present* at such vestry, and such person shall have and be entitled to give such and so many *vote* or votes at such vestry, in respect to the amount of such rent, profit, or value, as by the said act any inhabitant of such parish present at such vestry might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes as if such person were an inhabitant of such parish.

19. By s. 2. in all cases where any *corporation*, or body politic or corporate or company shall be *charged* to the rate for the relief of the poor of such parish, either in the name of such corporation or of any officer of the said corporation, the *clerk, secretary, steward or other agent*, duly authorized for that purpose, of such corporation or body politic or corporate or company, *to be present at any vestry* to be holden in the said parish under the said recited act; and such clerk, secretary, steward, or agent shall be entitled to give such and so many *vote* or votes at such vestry, in respect of the amount of the rent, profit, or value of such lands, tenements, or hereditaments, as by the said act any inhabitant assessed to such rate present at such vestry might or ought to have and be entitled to in respect of such amount.

20. By s. 3. reciting that whereas by the said act it was intended to be enacted that no person should be present at or vote at any vestry who should have refused to pay any assessment that had become due and had been demanded of such person, but the word 'and' was by mistake so inserted in the said act as to make the same in that respect ambiguous; to rectify such mistake, it is enacted, *that no person who shall have refused or neglected to pay any rate for the relief of the poor which shall be due from and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor, which shall have been assessed and charged upon or in respect of the annual rent, profit, or value, in right of which any such clerk, &c. shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied.*

WORKHOUSES.

- I. OF BUILDING, HIRING, &c. &c. WORKHOUSES.
 - II. CONTRACTS FOR LODGING, &c. THE POOR.
 - III. THE POWER OF JUSTICES TO VISIT, &c. AND REGULATE WORKHOUSES.
 - IV. REGULATING POOR CHILDREN WITHIN THE BILLS OF MORTALITY.
 - V. HOW FAR PAUPERS MAY BE RELIEVED OUT OF THE WORKHOUSE.
 - VI. OF THE REPEAL OF PROVISIONS IN LOCAL ACTS, &c.
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Building, hiring, &c. Workhouses. 1. By 43 *Eliz. c. 2. s. 5.* the churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within their parish is parcel, and upon agreement before with him in writing, under the hand and seal of the said lord, or otherwise, according to any order to be set down by the justices of the said county at their general quarter sessions, by like leave and agreement of the said lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the general charges of the parish, or otherwise of the hundred or county, as aforesaid, to be rated, and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; and also place inmates, or more families than one cottage or house; any thing in 31 *Eliz. c. 7.* contained notwithstanding; which cottages and places for inmates shall not at any time after be used for any other habitation, but only for impotent and poor of the same parish, that shall be there placed by the churchwardens and overseers of the same parish, or the most part of them, upon the pains and forfeitures contained in the said last-mentioned act.

2. By 9 *Geo. 1. c. 7. s. 4.* the churchwardens and overseers of any parish or place may, with the consent of the major part of the parishioners or inhabitants of the same parish in vestry, or other parish or public meeting assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, purchase or hire any house or houses in the same parish for the lodging and keeping the poor thereof. *Ad*

3. It is competent to the inhabitants and officers of two or more parishes uniting under the 9 *Geo. 1. c. 7. s. 4.* to purchase workhouses for the keeping and employing of the poor, to make such purchases in any other parish; for where two or more parishes

14 See 1 & 2 Geo. 4 c. 56 Addenda AF

unite, the legislature has not required that the building should be raised in either of the confederate parishes; and when once the joint purchase is made, wherever it may be, it becomes a part of the local system of each contracting parish. *Rex v. St. Peter and St. Paul*, i. 433.

4. But single parishes can only contract for these buildings within their own limits. *Ibid.*

5. And quære, when the workhouse is in a third parish, whether it is necessary to give the paupers sent there certificates, *ibid.*

6. By 59 Geo. 3. c. 12. s. 8. in any parish not having a workhouse for the poor, or where the workhouse shall be found insufficient or inconvenient, the churchwardens and overseers, may, by the direction of the inhabitants in vestry assembled, erect in such parish a suitable workhouse, or alter and enlarge any messuage or tenement belonging to such parish for that purpose, and purchase or take on lease any ground within the parish for purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose; or such churchwardens and overseers may add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct.

7. By s. 9. The churchwardens and overseers of any parish, may by the direction of the inhabitants in vestry assembled, and with the consent of two justices under their hands, dispose of any workhouse, or any other houses or tenements belonging to such parish which shall be found to be insufficient or unfit for the purpose, with the site thereof, and the out-houses, offices, yards, and gardens thereto belonging, for the best price that can be reasonably obtained, and may convey and assure the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct, and apply the produce of such sale, after deducting the reasonable expences thereof, towards the purchase or building of a new workhouse, or in or towards the payment of any money to be borrowed under the authority of this act, as the inhabitants in vestry shall direct.

8. By s. 10. the churchwardens and overseers of every such parish, by the direction of the inhabitants thereof in vestry assembled, may purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house or building. Provided that no such house or building shall be situate more than three miles from the parish for which the same shall be purchased or hired.

9. By s. 11. every house and building so purchased or hired, shall in all questions relative to the settlement of persons born or lodged therein, be deemed and taken to be part of the parish on behalf of which the same shall be purchased or hired, and by which the same shall be used as a poorhouse or workhouse.

10. By s. 14. no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor, shall be raised,

expended, or applied in any one year, in purchasing, building and repairing any buildings or land by this act authorized to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book.

11. By s. 15. in every case where the inhabitants of any parish shall, in manner aforesaid, consent that a greater sum than the amount of a rate or assessment of one shilling in the pound will raise, shall be expended in one year for all or any of such purposes and objects, the churchwardens and overseers may with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner herein-before directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums, by loan, or by sale of an annuity or of annuities or any life or lives, not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan, and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates (every proposal for any such annuity being first stated to and approved by the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers shall in the names and on the behalf of the inhabitants of the parish, sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted; and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the re-payment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times and in such manner and proportions, as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be liable to the payment of every such loan and the interest thereof, and of every such annuity accordingly.

12. By s. 16. provided that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound, shall in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, lands, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives) shall have consented to raise the money for which the charge or security shall purport to be made; such consents to be given by writing under the hands of all persons and corporation sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof, for the time being, and the consents of femes covert, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees,

attornies or agents; who are respectively authorized to give such consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates.

13. By s. 17. all *buildings, lands* and hereditaments, which shall be purchased, hired, or taken on lease by the churchwardens and overseers of any parish, by the authority and for any of the purposes of this act, shall be *conveyed*, demised, and assured *to such churchwardens and overseers*, and their successors, in trust for the parish; and such churchwardens and overseers and their successors, may accept, take, and *hold, in the nature of a body corporate*, for and on behalf of the parish, all such buildings, &c. and also all other buildings, &c. belonging to such parish; and in *all actions*, suits, indictments, and other proceedings, &c. in relation to any such buildings, &c. or the rent thereof, or in relation to any other buildings, &c. belonging to such parish, or the rent thereof, and in all actions and proceedings in relation to any bond to be given for the faithful execution of the office of an assistant overseer, it shall be sufficient to *name the churchwardens and overseers for the time being*, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and *no action or suit, indictment or other proceeding, shall abate, or be discontinued, defeated, or impeded, by the death of the churchwardens and overseers* named in such proceeding, or the deaths or death of any of them, or by their removal or the removal of any of them from, or the expiration of, their respective offices.

14. By s. 18. the clauses, powers, provisions and directions contained in 22 Geo. 3. c. 83. shall extend and be applied to all lands, tenements, and hereditaments, to be purchased, hired, or taken for the purposes and under the authority of this act, and to the payment and application of the purchase money for the same, as fully and effectually to all intents and purposes as if such clauses, powers, provisions, and directions were herein repeated and contained and expressly enacted and applied to lands and buildings to be purchased and taken on lease for any of the purposes of this act.

15. By 9 Geo. 1. c. 7. s. 4. the churchwardens and overseers in any parish or place, with the consent of the major part of the parishioners or inhabitants of the same parish, &c. in vestry or other parish or public meeting assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, &c. may contract with any person for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, &c. as shall desire to receive relief or collection from the same parish, and there keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor person or persons kept or maintained in any such house or houses, for the better maintainance and relief of such poor person or persons, who shall be there kept or maintained; and in case *any poor person* of any parish, &c. where such house or houses shall be so purchased or hired, shall *refuse to be lodged, kept, or maintained in such house or houses*, he or she shall be put out of the book or books where the names of the persons who ought to receive collection in the said parish, &c. are to be registered, and shall *not be entitled to receive collection or relief* from the churchwardens and overseers of the same parish, &c. and where any parish, &c. shall be too small to purchase or hire such

house or houses for the poor of their own parish only, *two or more of such parishes, &c.* may with the like consent of the major part of the parishioners, &c. as before mentioned, upon usual notice thereof first given, and with the approbation of any justice dwelling in or near any such parish, &c. signified under his hand and seal *unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, &c. so uniting, and there keep, maintain, and employ the poor of the respective parishes so uniting, and take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed: and if any poor person in the respective parishes, &c. so uniting shall refuse to be lodged, kept, and maintained in the house, hired or taken for such uniting parishes, &c. he or she shall be put out of the collection book, where his or her name was registered, and shall not be entitled to demand relief or collection from the churchwardens and overseers in their respective parishes, &c. and the churchwardens and overseers of any parish, &c. with like consent of the vestry of the parish, &c. where such house or houses is or are purchased or hired for the purposes aforesaid, upon usual notice thereof first given may contract with the churchwardens and overseers of any other parish, &c. for the lodging maintaining, and employing of any poor person or persons of such other parish, &c. as to them shall seem meet; and in case any poor person of such other parish, &c. shall refuse to be lodged, maintained, and employed in such house or houses, he or she shall be put out of the collection book of such other parish, &c. where his or her name was registered, and not be entitled to receive any relief or collection from the churchwardens and overseers of his or her parish, &c.: provided that no poor person his or her apprentice or child, shall acquire a settlement in the parish, &c. to which he she or they are removed by virtue of this act.*

Contracting for supplying, &c. the poor. 16. By 54 Geo. 3. c. 25. s. 1. no contract for lodging, keeping, maintaining or employing the poor of such parish or parishes where two or more are united in pursuance of

the last cited act shall be valid unless the *person or persons* with whom the same shall be entered into, shall and during the continuance of such contract be *resident within the parish so contracting, or within the particular parish in which such poor shall be lodged and maintained, or who, in the case where two or more parishes are united, shall be so resident as aforesaid in one of such parishes, or in the parish in which such poor person shall be lodged and maintained; and unless one or more* responsible householders, resident in such particular parish or in one of the said parishes, and to be approved of by the churchwardens or overseers of such parish or united parishes, as the case may be, shall at or before the time of the signing such contract, by their joint and several bond, with a penalty in not less than the amount of one half of the assessment to the poor's rate of such parish or united parishes for the year next but one preceding the year in which such contract shall be entered into, *give security to the said churchwardens and overseers, as the case may be, for the true and faithful performance of such contract on the part of the person or persons so to be contracted with as aforesaid; nor unless such contract shall be approved of and signed by two justices* acting for such county, city, or district in which such parish or united parishes, or one of them, shall be situated.

17. By s. 2. all such contracts as aforesaid, entered into otherwise than according to the regulations hereinbefore contained, shall be absolutely null and void; and every such contract which shall be entered into conformably to the directions of this act, by any churchwardens and overseers of any parish, *with any person who shall remove from and cease to reside in the particular parish or in one of the united parishes wherein such poor shall be lodged and maintained, before the expiration of the whole term for which such contract shall be intended to have continuance, shall also from the time of such removal cease:* provided always; that *the removal of such person shall not vacate the security entered into by any householder as aforesaid, for the true performance of the contract of such person so having contracted and removing, but the same shall continue in full force for the indemnification of the churchwardens and overseers of such parish or united parishes against any loss or expence incurred in consequence of such non-performance of such contract and of such removal; provided always, that nothing in this act contained shall extend to any parish, &c. where the poor are maintained under any special act of parliament:* provided also, that *nothing in this act contained shall extend to make void any contract that shall have been entered into before the passing of this act with any person for the lodging, keeping, maintaining, or employing of the poor of any parish in pursuance of the 9 Geo. 1. c. 7.*

18. By 50 Geo. 3. c. 50. s. 2. *persons contracting for the maintainance of the poor of any parish or place shall with respect to all things which they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices in like manner in all respects as overseers are subject to, and any order of a justice upon any person so contracting may be enforced in the same way as against an overseer, and such person shall be subject to the like forfeitures, &c. as overseers for disobedience to such order.*

19. By 55 Geo. 3. c. 137. s. 7. *so often as any contract or contracts shall be entered into for the providing, furnishing, or supplying any articles, materials, or things for the use of the poor in the workhouse or workhouses of or belonging, to any parish, township, hamlet, or place, or for the erecting of any building, the expence whereof is to be defrayed out of any rate or other monies applicable to the relief of the poor, the churchwardens and overseers or other person or persons having the management or direction of the poor in such parish, &c. shall cause notice of their intention to enter into such contract or contracts, and of the time and place when and where they shall assemble and meet for such purpose, and of the security which will be required for the performance of such contract or contracts, to be affixed in a conspicuous manner on the outer door of the church or respective churches to which such parish or parishes, township or townships, hamlet or hamlets, place or places shall belong, or to be inserted in one or more of the public newspapers most generally circulated in the neighbourhood, seven days at the least previous to such meeting, in order that any person willing to undertake the supplying the same may make proposals for that purpose to such churchwardens and overseers, or other person or persons as aforesaid, at the time and place mentioned in such notice.*

20. See under title "*Overseers*" art. 191. *et seq.* s. 6. of the above act respecting overseers themselves contracting to supply, &c. and cases on the subject. See also title "*Overseers*," Art. 96.

Power of justices &c. to visit the respective workhouses.

21. By 30 Geo. 3. c. 49. any justices or any physician, surgeon or apothecary, for that purpose authorized by warrant under the hand and seal of any such justice, or the officiating clergyman of the parish or place, duly authorized as aforesaid, at all times, in the day time may visit any parish workhouse, or house kept or provided for the maintenance of the poor of any parish or place, within the county or division, wherein such justice shall be resident and shall have jurisdiction, to examine into the state and condition of the poor therein, and their food, clothing, and bedding, and the state and condition of such house or houses; and if upon any such visitation the said justice or persons duly authorized as aforesaid, find any cause of complaint, he or they may, if they think fit, certify the state of such workhouse or poorhouse and of the poor therein, and of their food, clothing, and bedding, to the next quarter sessions for such county, &c. wherein such workhouse or poorhouse shall be situate, under his or their hands and seals and such justice or other persons duly authorized as aforesaid, shall cause the overseers or master or governor of the said workhouse or poorhouse to be summoned to appear at the same sessions, to answer such complaint; and the justices at such quarter sessions, on hearing the parties may make such orders and regulations, for the removing of any such cause of complaint as to them shall seem meet; and all the parties concerned shall abide by such orders and regulations so made.

22. By s. 2. in case any justice or persons duly authorized by warrant as aforesaid, shall, upon any such visitation, find any of the poor in any parish workhouse or poorhouse afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then if such visitation be made by a justice, he may apply to one other justice in the county, &c. and certify to him the state of the poor in such workhouse or poorhouse; or if such visitation shall be made by the persons duly authorized as aforesaid, then, shall such persons apply to two justices in such county, &c. who may make such order for the immediate procuring medical or other assistance, or of sufficient and proper food, or for the separation or removal of such poor as shall be afflicted with any contagious or infectious disease, in such manner as they, under their hands and seals think proper to direct, until the next quarter sessions for the said county, &c. wherein such workhouse or poorhouse is situate; at which sessions the said two justices are to certify the same, under their hands and seals respectively, to the justices at such quarter sessions, who shall make such order for the further relief of the poor in such workhouse or poorhouse, as to them shall seem meet; and the charges of relieving such poor shall be paid out of the poor rate of such parish, in such manner as the said justices assembled at such quarter sessions shall direct.

23. By s. 3. this act not to extend to any poorhouse or workhouse in any district incorporated or regulated by any special act of parliament.

24. By 50 Geo. 3. c. 50. s. 1. two justices within their respective limits may at any special sessions direct the rules, orders, and regulations, in the schedule to the 22 Geo. 3. c. 83. (which see under title "*Incorporated Parishes*") or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poorhouses, or any houses set apart for that purpose, although there should be no master

or mistress to superintend the same, of any parish or place within their respective divisions, as fully and effectually as the rules and orders by the said act established, are to be observed within the parishes adopting the provisions of the same act; and two such justices, in any special sessions from time to time as they shall see occasion, may add to and alter the rules, orders, and regulations which shall at any previous special sessions have been made and ordered to be observed, provided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders, and regulations established by the said 22 Geo. 3. c. 83., and provided that the same shall not be repealed by the justices at their quarter sessions; and for carrying into execution such rules, orders, and regulations in every parish and place where the same shall be established by virtue of this act, every justice shall for that purpose have the powers by the said 22 Geo. 3. c. 83. vested in visitors of the poor; and all churchwardens and overseers, within their respective parishes and townships, shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor.

25. By s. 3. the justices in any such special session as aforesaid, upon the application of the overseers of any parish or place, or of the major part of them may appoint the keeper of the workhouse of any such parish or place to be the governor thereof, and the keeper so appointed, so long as he shall continue keeper of such workhouse until the justices in any such special session shall revoke such appointment (which they are hereby empowered to do) shall have and exercise the powers, and perform the duties by the said 22 Geo. 3. c. 83. vested in governors of the poor.

Paupers and others misbehaving or embezzling goods &c. 26. By s. 4. if any person sent to any poorhouse or workhouse embezzle, or wilfully waste, spoil or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer or keeper of the said workhouse, any clothing, goods or materials provided for the use of such poor house, or of any of the poor therein, on complaint thereof made upon oath to one justice for the division in which such parish shall be situate; and upon conviction thereof such justice may commit the offender to the house of correction, to be kept to hard labour for not more than two calendar months, nor less than seven days.

27. By s. 5. any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as by the 22 Geo. 3. c. 83. directed for the breach of the rules and orders to be enforced under that act.

28. By 54 Geo. 3. c. 170. s. 7. it shall not be lawful for the master, governor, or other person entrusted with the superintendence of any house for the reception of poor persons, or the churchwarden, overseer, or other persons appointed, by or under the authority of any act or acts of parliament for the control or management of the poor of any district, parish, township, or hamlet, to punish with any corporal punishment whatsoever, any adult person under his, her, or their care for any offence or misbehaviour whatsoever; or to confine any such person whatsoever, for any offence or misbehaviour for any longer or greater space of time than twenty-four hours, or such further space of time as may be necessary, in order to have such person before a justice,

29. By 56 Geo. 3. c. 129. s. 2. no governor, director, guardian, or master of any house of industry or workhouse shall on any pretence chain or confine, by chains or manacles, any poor person of sane mind.

30. By 55 Geo. 3. c. 137. s. 1. the *property of and in all and singular the goods, chattels, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had and to be had, bought, procured, or provided for the use of the poor of any parish township, hamlet, or place, is vested in the overseers of such parish, &c.* for the time being, and their successors in office, for the purposes of this act, who may bring any action or actions, or prefer any bill of indictment against any person who shall, steal, take or carry away, or buy or receive any such goods, &c. or things whatsoever as aforesaid, or any part thereof; and in every such action and indictment the said goods, &c. shall be laid to be the property of such overseers for the time being of such parish, &c. without stating or specifying the name of any of such overseers: provided that *nothing herein contained shall extend to repeal any of the provisions contained in any act of parliament, whereby the property of and in any such goods, &c. is or may be vested in any other person, jointly with, or independent of the overseers of any parish, &c.*

31. By s. 2. the overseers, or other person or persons who may be appointed for the ordering, regulating, managing, or providing for the poor of any parish, township, hamlet, or place, jointly with or independent of such overseers may cause all such *goods, &c. capable of being marked, and from time to time belonging to such overseers, or other person or persons, to be marked, stamped, or branded with the word "Workhouse," and such other mark or marks as they shall think proper for identifying the parish, &c. by which the same shall have been provided: and if any pawnbroker or other person knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish, &c. or to whom the same shall have been given by the overseers or other such person or persons as aforesaid, appointed as aforesaid, of or for any such parish, &c. or any of them, or any of the goods or materials carried into any such workhouse, to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse; or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse, or shall be aiding or assisting therein; or if any person shall cause such mark or stamp, marks or stamps as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of 5*l.* nor less than 1*l.* upon conviction thereof, either by the confession of such person, or by the oath of one witness before any one justice of the county, city, town, riding, or division wherein the offence shall be committed; one moiety to the informer or informers, and the other moiety to the overseers of the parish, &c. to which such articles or things may belong, for the use of the poor of such parish, &c.; and in case any person convicted as aforesaid, shall not pay such penalty upon conviction, then such justice shall commit such offender to the common gaol or house of correction, for any space of time not exceeding two calendar months; and if any person desert or run away from any workhouse, and carry away with him or her, any *clothes,**

en, or other goods or things, as aforesaid, such person being thereof convicted by the confession of such party, or by the oath of one witness before any justice, shall by such justice be forthwith committed to the common goal or house of correction, for the space of three calendar months; and in all cases, such mark, stamp, or brand on any such articles or things as aforesaid (being duly authenticated) shall be taken to sufficient evidence, without further proof, of the right of property in which overseers or other person or persons appointed as aforesaid, as the case may be: provided always, that such mark or stamp as aforesaid shall at any time be placed on any articles of wearing apparel, so as to be publicly visible on the exterior of the same.

32. By s. 5. in case any person maintained in any public workhouse for relief, maintenance, and employment of the poor, refuse to work at any work, occupation, or employment suited to his or her age, strength, and capacity, or be guilty of drunkenness or other misbehaviour, every such person being convicted before any justice, shall by him be committed to the common gaol or house of correction, for any period not exceeding six days, during such time to be kept to hard labour.

33. By s. 8. the form of the conviction is given; and such conviction shall not be set aside for want of any other form of words whatever; nor removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster.

34. By s. 9. any person aggrieved by the judgment of such justice, may appeal to the next general or quarter sessions for the county, city, or place wherein the cause of complaint shall have arisen; such person at a time of his or her conviction, entering into a recognizance with two sufficient sureties, personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions; and the said justices at such sessions shall hear and determine the causes and matters of such appeal in a summary way, and make such order therein as they think proper; which determination shall be final.

35. By 24 Geo. 2. c. 40. no spirituous liquors shall be sold or used in any workhouse or house of entertainment for parish poor.

See 9 Geo. 1. c. 7. s. 4. *ante*.

How far Paupers to be relieved out of the Workhouse, &c.

36. Under 9 Geo. 1. c. 7. s. 4. it seems that when relief is granted to a poor person, such person only, and not the rest of the family, is obliged to go into the workhouse. *Rex v. Haigh & another*, 3 T.R. 637.

37. When the last case was decided, a case (*Rex v. Carlisle*) was mentioned where all the judges were of opinion, that upon the other's refusal to go to the workhouse, the parish officers were justified in refusing relief ordered to her and her child; but this case, Lord Kenyon said, was very distinguishable from the present. It would be contrary to the spirit and words of the act," his lordship continued, "that where all the children of a family, except one, were capable of supporting themselves, and that one was

unable either for want of reason, or the use of its limbs, to maintain itself, and was under the necessity of receiving relief, that the whole family were to be sent to the workhouse. *ibid.*

38. See also *Rex v. Winship and Grunwell*, i. 404. *Burr.* 2677. and *Rex v. North Shields*, *Doug.* 351. i. 408. where the same point was agitated, but not decided.

39. By 36 *Geo.* 3. c. 23. s. 1. after reciting the inconveniency and oppression which had arisen from that clause of the 9 *Geo.* 1. c. 7. authorizing overseers to put those paupers who should refuse to be lodged, kept, and maintained in the pothouse out of the relief-book, it is enacted, that the *overseer* or overseers of any parish, town, township, or place, with the approbation of the *parishioners* or the majority of them, in vestry or other usual place of meeting assembled, or with the approbation in writing, of any justice usually acting in and for the respective district, may distribute and pay collection and relief to any industrious poor person, at his or her home or house, under certain circumstances of temporary illness or distress, and in certain cases respecting such poor person, or his or her family, or respecting the situation, health, or condition of any poorhouse, in any parish, &c. wherein a house or houses shall have been or shall be so hired, built, or purchased, and a contract made with any person or persons for lodging, keeping, maintaining, and employing, any or all poor persons who shall desire to receive collection or relief, *although such poor person or persons shall refuse to be lodged, kept, and maintained, within such house or houses.*

40. By s. 2. any justice for any county, city, town, or place, usually acting in and for the district wherein the same shall be situated, at his discretion, may order collection and relief to any industrious poor person, and he or she shall be entitled to ask and receive such relief at his or her home or house, in any parish, town, township, or place, notwithstanding any contract shall have been or shall be made with any person or persons for lodging, keeping, maintaining, and employing any and all poor persons in a house or houses for such purpose hired or purchased, and the churchwarden or churchwardens, overseer or overseers, for such parish, &c. are required to obey and perform such order for relief given by any justice aforesaid.

41. By s. 3. the special cause, as hereinbefore mentioned, of ordering and directing collection or relief to any poor person, at his or her home or house, shall be assigned and written on each order for relief given and directed by any justice as aforesaid; and such order shall be given for, and remain in force for a time not to exceed one month from the date of such order; also, any two justices as aforesaid may make any further order for the same or like purpose, for any further time not exceeding one month from the date of such order, and so on from time to time, as the occasion shall require, such justice first administering an oath as to the need and cause of such relief in each of the above cases, and thereon summoning the overseer or overseers of the parish, town, township, or place, to be charged with such relief, to shew cause why such poor person or persons should not receive such relief in manner as by law provided in cases where no contract for lodging, keeping, and maintaining the poor, shall as aforesaid have been made.

42. By s. 4 & 5, this statute is declared to be a public act; but not to extend to places where houses of industry are provided under 22 Geo. 3. c. 83. or under any special act.

43. By 55 Geo. 3. c. 137. s. 3. any justice, in the cases and in the manner mentioned in the said act, may order collection and relief to be paid to any poor person at his or her home or house, during such time as to such justice may seem proper, not exceeding three months from the date of each order: provided that any two justices may make any further order for the same or the like purpose, for any further time not exceeding six months from the date of such order, and so on from time to time as occasion shall require; such justice or justices first administering an oath as to the need and cause of such relief, in each of the above cases, and thereupon summoning the overseers of the parish, town, township, or place, to be charged with such relief, to shew cause why such poor person should not receive such relief in manner as by law provided in cases where no contract for lodging, keeping, and maintaining the poor shall have been made; and in case it shall afterwards appear to the justice or justices making such order, that the payment of such collection or relief to any such person as aforesaid ought to be discontinued before the expiration of the time for which any such order or orders shall have been made, such justice or justices may order such relief to be discontinued, and from thenceforth the person on whose account such order shall have been made, shall not be entitled to ask or receive the same.

See under title *Vestries*, art. 12. (59 Geo. 3. c. 12. s. 2.) *ante*.

Poor children 44. See 7 Geo. 3. c. 39. containing regulations, &c, for within Bills of such parish poor children, but which it was not deemed *Mortality*. necessary to give here at length.

Repeal of provisions in local acts. 45. By 56 Geo. 3. c. 129. all enactments and provisions, in any act of parliament since the commencement of the reign of king George the first, whereby any poor person other than such as shall actually apply for and receive parochial relief, are compelled or made compellable to go or remain in any house of industry or workhouse; or whereby any poor person may be detained or kept in any house of industry or workhouse, at the discretion of the governors or directors thereof, or of the churchwardens or overseers of any district, parish, township, or hamlet, after such persons are capable of maintaining themselves; or whereby any poor person may be compelled to remain in any house of industry or workhouse, until the charges and expences to which any district, parish, township, or hamlet, may have been put, or become liable or chargeable for the maintenance or support of such poor person, or any of his or her family, shall be repaid, or reimbursed, or satisfied by the earnings or labour of such poor person; or whereby any poor child is rendered liable to be apprenticed to any governor, director, or master of any such house of industry or workhouse; or whereby any parish, township, or hamlet, at a greater distance than ten miles from such house of industry or workhouse, shall hereafter be empowered to become contributors to, or to take the benefit of, such house of industry or workhouse; or whereby any directors, governors, guardians, or masters of any such house of industry or workhouse, are empowered to hire out any poor person of full age, or to contract with any person to have and take the profit of the labour of such poor person, are wholly and severally repealed.

ADDENDA ET CORRIGENDA*.

A. p. 2.—For titles "*Certiorari* and *Mandamus*" read "*title Overseers*."

B. To p. 4. art. 6.—By 1 *Geo. 4. c. 3.* (reciting the 17 *Geo. 2. c. 38. s. 3.*) it is enacted, that in all corporations and franchises, not having more than six justices, nor having jurisdiction over two or more whole parishes or wards contained within such corporation or franchise, any person in any of the cases mentioned or referred to in 43 *Eliz. c. 2.* or 17 *Geo. 2. c. 38.* where an *appeal* is given by the said acts or either of them may appeal to the next general or quarter sessions for the county, riding, or division wherein such corporation or franchise in as ample a manner as if such corporation or franchise had not four justices, but nothing in this act shall extend to any city or town corporate being a county of itself.

It seems that neither of the se statutes apply to orders of removal. See by *Abbott, Ch. J. Rex v. Carmarthen*, 4 *B. & A.* 291.

C. To p. 21. after art. 6. See *Rex v. Carmarthen*, *Addenda post art. KK.*

D. p. 34. line 12 from the bottom, for *Rex v. Highnam*, read *Rex v. Landon*, ii. 378. 8 *T. R.* 379. and for the words "*See also Rex v. Landon*, 8 *T. R.*," read "*upon this occasion*," &c.

E. pp. 59, 65 & 73, line 16 from the bottom, for "*c. 134.*" read "*c. 139.*"

F. To p. 77, after art. 257, (for the registering of parish apprentices,) by 44 *Geo. 3. c. 46.* the *overseers* of every parish, township, or place, appointed by virtue of 43 *Eliz. c. 5.* shall *provide* and keep a book or books, at the expence of the said parish, township, or place, and enter, or cause to be entered therein, the *name* of every child who shall be bound out by them respectively as an *apprentice*, together with the several *other particulars*, in manner and form required by this act, according to the schedule hereunto annexed; and every such entry, when made in the said register, shall be produced and laid before two justices, who shall signify their assent to the indenture of apprenticeship of every such child, at the time when such indenture shall be laid before such justices for their assent, as required by the said 43 *Eliz.* and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule hereunto annexed.

* Some of the cases here given were not in print at the time when that part of the work to which they relate went to press, and in respect of the corrections in sheet O it was unfortunately, by mistake, printed off before it was finally corrected.

By s. 2. if any *overseer neglect* to provide and keep such book or books, or to make such entry therein as before directed, or shall destroy, or permit, or cause to be destroyed, any such book or books, or shall wilfully and knowingly *obliterate, deface*, or alter any such entry, so that the same shall not be a true entry of the several particulars hereby required, or shall wilfully and knowingly make a *false entry* therein, or shall so permit, suffer, or cause the same to be done, or shall not produce or lay such book or books before such justices as aforesaid for their signatures, or shall not deliver or tender, or cause to be delivered or tendered, such book or books to his, her, or their successor or successors in office, within fourteen days after the appointment of such successor or successors, or if any such successor or successors shall refuse or neglect to receive the same when offered or tendered to him or them by his or their predecessor or predecessors in office, then and in every such case, every such person so offending shall, for every such offence, on being convicted thereof before any two justices for the county, city, or place where the offence shall be committed, on the oath of any credible witness, (which oath such justices are hereby empowered and required to administer,) or on the voluntary confession of the party or parties, *forfeit a sum not exceeding 5l.* to be recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hands and seals of the justices before whom the offender or offenders shall be convicted, and the overplus (if any) of the money arising by such distress and sale, shall be returned, upon demand, to the owner or owners of such goods and chattels, after deducting the costs and charges of making, keeping, and selling such distress; and such penalties and forfeitures shall be applied for the use of the poor of the parish, township, or place, for which such offender or offenders shall be overseer or overseers; and *in case sufficient distress cannot be found*, or such penalties and forfeitures shall not be paid forthwith, such justices may, by warrant under their hands and seals, *commit every such offender to the common gaol*, or house of correction of the county, city, or place where the offence shall be committed, for any time not exceeding one calendar month, unless such forfeitures be sooner paid.

By s. 3. any person, at all seasonable hours, may *inspect such book or books* in the hands of the said overseer or overseers, and take a copy of such entry in such book or books, upon payment of the sum of sixpence, except in case of any justice acting in and for the said county, who shall be entitled at all such times to inspect such book *gratis*; and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever, in proof of the existence of such *indentures*, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed.

S. 4. contains the form of the conviction.

By s. 5. whenever any such *apprentice* shall be assigned or bound over to any other master or mistress, by virtue of 32 Geo. 3. c. 57. in every such case, the overseer or overseers, party or parties to the assignment, of such apprentice, shall *insert the name and residence of the master or mistress to whom* such apprentice shall be assigned or bound over as aforesaid, together with the other particulars, in the book or books herein directed to be provided and kept by such overseer or overseers; and for *non-performance* thereof, every such overseer or overseers shall be liable to

ustices to shew cause against granting the *certiorari* and they may for cause that the party suing out the writ was a stranger to the city, and not interested in the order. *Rex v. Lancashire*, 4 B. & A.

p. 135. With regard to special constables see 41 Geo. 3. c. 78. and 40. 4. c. 37.

p. 138. art. 29. for the title "*Removal*," read titles, "*Removal and Grants*."

p. 141. In *Pendrel v. Pendrel*, i. 454. Str. 495. *Raymond*, Ch. J. allowed the defendant to prove the mother to be a woman of ill fame, but did not permit the mother's declarations to be given in evidence till she been called, and decried them on cross-examination.

p. 145. at the bottom of the page say, "and as to the competency of inhabitants see p. 244. art. 35."

p. 157. after art. 36. By 59 Geo. 3. c. 12. s. 27. if it shall be made appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the Parish or United Parishes from which relief shall be sought is absent from home, or is resident more than miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, such justice may summon the guardian to appear before him to answer such complaint, and may make such order therein as the case shall require, in the manner as in cases where application hath been made to the visitor in the manner by the said act directed.

p. 164. at the end of title "*Incorporated Parishes*." By 20 Geo. 3. c. 36. respective persons to whom any poor children shall be appointed to bound apprentices, in pursuance of any act or acts of parliament made or passed for the better relief and employment of the poor in any parish or incorporated hundreds or districts, shall receive and provide for such children according to the indentures, to be executed by the directors and acting guardians of the poor for such respective hundreds or districts, for the binding of such poor children, in like manner as persons are now obliged by the laws in being to receive and provide for such children appointed to be bound apprentices by churchwardens and overseers of the poor, with the assent of two justices, and also to execute the counterpart of such indentures respectively; and any person to whom any poor child shall be appointed to be bound apprentice, in pursuance of any such act of parliament as aforesaid, refusing or neglecting to receive and provide for such poor child, or to execute the counterpart of the indenture for binding such child as aforesaid, upon proof of such refusal or neglect being made, by the oath of one of the directors or acting guardians, or of some other credible witness, before two justices acting in and for the county, liberty, or place within which the incorporated hundreds or districts to which such child belongs shall be situate, shall forfeit and pay to the directors and acting guardians of the poor for such incorporated hundred or district, or to their treasurer or appointee, to be applied to the relief of the poor within the county, the sum of 10*l.*, such penalty or forfeiture to be levied by distress and sale of the goods of the person refusing or neglecting as aforesaid, by warrant under the hands and seals of such justices; saving always to the

the pains, penalties, and forfeitures incurred by this act, in like manner as if such apprentice had been originally bound to such master or mistress.

By s. 6. reciting, that by different acts of parliament, the like powers are given to certain persons therein named, for binding out parish apprentices, as are given to the overseers of the poor; it is enacted, that such several persons shall be subject to the like pains, penalties, and forfeitures for non-compliance with the several provisions and directions in this act contained, for registering any parish apprentice bound out or assigned by them respectively, to which overseers of the poor are subject and liable by virtue of this act, for non-compliance with such provisions and directions.

By s. 7. if any person or persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, may appeal to the justices at the first general quarter sessions for the county or place where the cause of appeal shall arise, *within four calendar months* next after the cause of appeal shall have arisen, on giving to the person or persons appealed against *ten days' notice* of such appeal, and of the matter thereof; and the justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to grant such costs and expences to either party as to them shall seem reasonable.

By s. 8. reciting that, by 20 Geo. 3. c. 36. the powers given by several preceding acts to bind poor children apprentices, were extended as to the power of compelling persons to receive and provide for such poor children as should be appointed to be bound apprentices to them in pursuance of the said prior acts; and whereas since that time several acts have passed, by which houses of industry, or establishments for the poor, have been authorized to bind apprentices; and doubts have arisen whether the powers and provisions in the said 20 Geo. 3. c. 36. will extend to the case of apprentices so bound out under the authority of such subsequent acts; it is enacted, that the several powers and provisions in the said 20 Geo. 3. contained, shall extend to poor children bound apprentices under the authority of any acts passed since the said recited act, in the same manner as if such acts had passed prior to the said 20 Geo. 3.

G. p. 95, after the note, add "but see *Rex v. Hemlington*, i. 406. where an order of maintenance made upon the parish in which the bastard was settled in relief of the parish in which the mother was settled, and to which she had taken it for nurture, it was held good."

H. p. 96, last line but 12, before "father" insert "putative" and (next line) for "of" read "over."

I. p. 105. line 15. from top, add "c. 170" and at art. 98. for "*Rex v. Worthy*" read *Rex v. Woolley*.

J. To p. 106. art. 101. And if the putative father of a bastard child pay, before its birth, a fixed sum to the parish officers to discharge him of all future responsibility for the maintenance of the child, he may, after the death of the child, recover from the parish officers such part of the money as remains unexpended, as money had and received to his use. *Watkins v. Hewlett*, 1 Brod & Bing, 1. 3 Moore, 211.

K. To p. 129, after art. 13. Such notice must be given to the party suing out the writ, and that circumstance must appear on the face of the notice, the justices ought to have their attention called to the name of the party by the notice itself: the very object of the notice is to enable

the justices to shew cause against granting the *certiorari* and they may shew for cause that the party suing out the writ was a stranger to the county, and not interested in the order. *Rex v. Lancashire*, 4 B. & A. 289.

L. p. 135. With regard to special constables see 41 Geo. 3. c. 78. and 1 Geo. 4. c. 37.

M. p. 138. art. 29. for the title "*Removal*," read titles, "*Removal and Vagrants*."

N. Top. 141. In *Pendrel v. Pendrel*, i. 454. *Str. 495. Raymond, Ch. J.* allowed the defendant to prove the mother to be a woman of ill fame, but would not permit the mother's declarations to be given in evidence till she had been called, and decried them on cross-examination.

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P. p. 157. after art. 36. By 59 Geo. 3. c. 12. s. 27. if it shall be made to appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the Parish or United Parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, such justice may summon the guardian to appear before him to answer such complaint, and may make such order therein as the case shall require, in like manner as in cases where application hath been made to the visitor in the manner by the said act directed.

2. p. 164. at the end of title "Incorporated Parishes." By 20 Geo. 3. c. 36. The respective persons to whom any poor children shall be appointed to be bound apprentices, in pursuance of any act or acts of parliament made and passed for the better relief and employment of the poor in any particular incorporated hundreds or districts, shall receive and provide for such children according to the indentures, to be executed by the directors and acting guardians of the poor for such respective hundreds for districts, for the binding of such poor children, in like manner as persons are now obliged by the laws in being to receive and provide for poor children appointed to be bound apprentices by churchwardens and overseers of the poor, with the assent of two justices, and also to execute the counterpart of such indentures respectively; and any person to whom any poor child shall be appointed to be bound apprentice, in pursuance of any such act of parliament as aforesaid, refusing or neglecting to receive and provide for such poor child, or to execute the counterpart of the indenture for binding such child as aforesaid, upon proof of such refusal or neglect being made, by the oath of one of the directors or acting guardians, or of some other credible witness, before any two justices acting in and for the county, liberty, or place within which the incorporated hundreds or districts to which such child belongs shall be situate, shall forfeit and pay to the directors and acting guardians of the poor for such incorporated hundred or district, or to their treasurer or appointee, to be applied to the relief of the poor within the same, the sum of 10*l.*, such penalty or forfeiture to be levied by distress and sale of the goods of the person refusing or neglecting as aforesaid, by warrant under the hands and seals of such justices; saving always to the

person to whom any poor child shall be so appointed to be bound an apprentice, his or her *appeal* to the next general or quarter sessions of the peace for that county, liberty, or place, whose order therein shall be final.

By s. 2. nothing in this act contained shall be construed to compel any person to take any such poor child apprentice as aforesaid, unless such person be an inhabitant and occupier of lands, tenements, or hereditaments in the parish to which such child belongs; and that all bastard children born, or to be born in the house of industry within any such incorporated hundred or district, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

See *Rex v. Tunstead*, title "*Apprentice*," art. 193.

See also same title, 253, and 42 Geo. 3. c. 46. s. 8. *Addend. F.*

R. p. 166. read, II. Who are chargeable, and penalty for disobedience. III. Maintenance of Deserted Families.

S. To p. 168. after art. 20. The Court of King's Bench will not grant a mandamus to justices to make an order of maintenance on a particular parish. There is no instance where the court have granted a mandamus to justices to compel them to come to any particular decision: the ordinary practice is, to grant the writ to compel magistrates to hear and determine a case where they have a jurisdiction to hear but have refused to execute it. *Rex v. Middlesex*, 4 B. & A. 298.

T. To p. 172. after art. 3. see *Rex v. Lancashire*, *Addend. K.*

U. p. 193. l. 5. from top, for "is," read "are."

V. To p. 198. last line but one, add "See also title *Workhouses*."

W. To p. 209. art. 176. See *Rex v. Moorhouse*, p. 253. art. 36.

X. p. 212. after art. 194. The law will not raise an implied promise in the parish where a pauper is settled, to reimburse money laid out by a parish, where the pauper happened to be, in providing necessary medical assistance for him.

"A moral obligation is a good consideration for an express promise, but it has never been carried further so as to raise an implied promise in law." *Atkins v. Burwell*, 2 E. R. 504.

Y. p. 222. art. 70. The tolls of a navigation, directed by an act of parliament to be applied to public purposes, are not rateable. The court distinguished such a case from *Rex v. St. Luke's Dock Company of Hull*, &c. since here the commissioners were merely trustees for the public without any personal advantage. *Rex v. Salter's Sluice Navigation Company*, 4 T. R. 730. i. 201.

Z. p. 223. after art. 78. see div. VI. of title "*Poor-rate*," arts. 62, 63, 64.

AA. To p. 223. after 78. By 59 Geo. 3. c. 12. s. 19, reciting, that whereas many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded, by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences or become insolvent before the rates charged on them can be collected; and it hath been found that in many instances the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged

with or required to pay such rates, and do thus obtain an undue advantage to themselves, and by means of the premises, the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor; it is enacted, that from the first day of January, one thousand eight hundred and twenty, the inhabitants of any parish, in vestry assembled, may direct, that *the owner or owners* of all houses, apartments, or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be *let* to the occupiers thereof at any *rent or rate not exceeding 20l. nor less than 6l.* by the year, for any less term than one year, or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall *be assessed* to the rates for the relief of the poor, for or in respect of such houses, apartments, or dwellings, and the out-houses and curtilages thereof, *instead of the actual occupiers*; and the inhabitants so assembled in vestry may, and they are hereby authorized, from time to time to rescind, renew, vary, and amend every such resolution or direction as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the outhouses and curtilages thereof, be let at a greater rent than 20l. or less than 6l. as aforesaid; and the churchwardens and overseers of every such parish are hereby empowered and required to carry into effect all such resolutions and directions of the inhabitants in vestry assembled, and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound-rate the owner or owners, being the immediate lessor or lessors of the actual occupier or occupiers, of every house, apartment, or dwelling to which such resolution and direction shall extend, for or in respect of the same, according to the actual rent at which every such house, apartment, or dwelling shall be let, after making a reasonable deduction from such rent, not exceeding in any case one half of the same; and upon non-payment of the sum or sums so to be assessed, the same may and shall be levied upon, and the payment thereof enforced against, such owner and owners, lessor and lessors, so to be assessed, and his and their goods and chattels, in like manner as rates for the relief of the poor may by law be levied and recovered, and the payment thereof enforced, upon and against any actual occupier on whom the same are charged.

By s. 20. provided that the goods and chattels of every occupier of every such house, apartment, or dwelling, which shall be found in and about the same, shall be liable to be *distrained* and sold for raising so much of any such rate or assessment being in arrear, as shall have become due during the occupancy of the person or persons whose goods and chattels shall be so distrained (to be ascertained in a summary way by the justices granting the warrant of distress), so that in no case any greater sum be raised by distress of the goods and chattels of any such occupier than shall, at the time of making such distress, be actually due from such occupier for rent of the premises on which such distress shall be made: provided also, that every occupier who shall pay any such rate or rates, or upon whose goods or chattels the same or any part thereof shall be levied, shall and may deduct the amount of the sum which shall be so paid or levied, out of the rent by him or them payable; and such payment

shall be a sufficient discharge to every such occupier for so much of the rent payable by him as he shall have paid, or as shall have been levied on his goods and chattels, of such rate, and for the costs of levying the same.

By s. 21. *every person receiving or claiming the rent of any such house, apartment, or dwelling, for his or her own use, or receiving the same for the use of any corporation aggregate, or of any landlord or lessor who shall be a minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which any such house, apartment, or dwelling shall be situated, shall for this purpose be deemed and taken to be and shall be rateable as the owner thereof.*

By s. 22. *every person to be rated as the owner of any such house, apartment, or dwelling, who shall think himself or herself aggrieved by any such rate, shall have such and the like remedy by appeal against the same as any other person thereby rated; and every person so rated shall be entitled, as an inhabitant of the parish in and for which he shall be assessed, to be present and to vote in every vestry or meeting of the inhabitants thereof, for the execution of the laws for the relief of the poor, or for the consideration of any matter or question in relation thereto, in like manner as the inhabitants of the said parish.*

By s. 23. *nothing in this act contained shall extend to give any power or authority to assess the owner (not being the occupier) of any house, apartment, or dwelling, in any city, borough, or town corporate, in which the right of voting for the election of members to serve in parliament shall depend upon the assessment of the pauper to the poor-rate, or to vary or affect the manner of assessing or charging any inhabitant or occupier of houses, lands, or tenements, within any such city, borough, or town corporate.*

BB. Top. 229. after art. 54. "corporations may unquestionably be rated." by Lord Kenyon, *Rex v. Salter's Sluice*, i. 201. *ib.* It seems that the annual profits of a fair are not rateable. *Rex v. Brograve*, *Burr.* 2291. i. 141.

And, in a later case, the lessee of market tolls in gross, not incident to the soil, was held not rateable to the poor in respect of his occupancy thereof. *Rex v. Bell*, 5 M. & S. 221.

CC. p. 239. after art. 128. See 59 Geo. 3. c. 12. s. 29. Addend. AD.

DD. p. 252. for "43 Eliz. c. 2." read "14 Eliz. c. 5." and (same page,) line 3 from the bottom, for "lived" read "live."

EE. Top. 262. after art. 50. see Addend. FF.

FF. p. 267. after art. 97. An order of removal, made upon complaint that M. S., the wife of W. S., who is absent from her, is come to inhabit, &c. and is now with child, which is likely to be born a bastard, adjudging the said M. S. to be actually chargeable, was held sufficient in form, although the complaint did not state that the pauper was actually chargeable. *Rex v. Inskip with Sowerby*, 5 M. & S. 299.

GG. p. 245, after art. 1. By 57 Geo. 3. c. 34. (for authorizing the issue of exchequer bills, and the advance of money out of the consolidated fund to a limited amount, for carrying on of public works and fisheries in the United Kingdom, and employment of the poor of Great Britain, in manner therein mentioned,) s. 29. no such exchequer bills shall be advanced in aid of any parish in Great Britain, unless the application for such advance shall be made with the consent of not less than the majority is

number, and of three-fourth parts in value (such value to be calculated and ascertained from the last rate made for the relief of the poor in such parish) of the persons assessed to and for paying such rates; or where the poor-rates of any parish shall be under the care and management of any select vestry or commissioners, governors of the poor, trustees, or other select body, then with the consent of not less than four-fifths of such select body, by whatever name the same may be called; such consent to be certified by some justice or magistrate acting as such in each parish, and one or more of the overseers of the parish or place in respect of which the application shall be made.

By s. 35. the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners, for the execution of this act in Great Britain under the authority of this act, shall be repaid, without deduction or abatement, together with interest for the same, by instalments, that is to say, the principal sum in each and every exchequer bill shall be repaid to the cashier or cashiers of the Bank of England at their office, together with interest for the same, at and after the rate of five pounds per centum per annum, by the space of fifteen days at least before the time when each such exchequer bill shall become payable to the provisions of this act, such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof.

By 57 Geo. 3. c. 124. s. 5. it is enacted, that no advance shall be made under the provisions of 57 Geo. 3. c. 34. for the use of any parish, township, or place in Great Britain, in which the amount of the money actually expended for the relief of the poor, in the year ending at Easter 1817, or ending at the usual quarter day immediately preceding Easter 1817, shall not exceed by three-fourths the average annual amount of the money expended for the relief of the poor for the three years preceding Easter 1816, or shall not exceed by one-half the amount so expended for the year ending Easter 1816; any thing in the said act of 57 Geo. 3. c. 34. to the contrary in anywise notwithstanding.

By s. 6. the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners, for the execution of this act in Great Britain under the authority of the recited act (57 Geo. 3. c. 4), the payment whereof shall not be otherwise provided for pursuant to the said recited act, shall be repaid without deduction or abatement, together with interest for the same, at and after the rate of five pounds per centum per annum, to the cashier or cashiers of the Bank of England, at their office, by the space of fifteen days at least before the time when each such exchequer bill become payable, according to the provisions of this act; such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof.

By s. 1. Geo. 4. c. 60. the above-mentioned act of the 57 Geo. 3. c. 34. and the 57 Geo. 3. c. 124. are continued and amended.

HH. p. 270. after art. 126. The power given to magistrates, under 35 Geo. 3. c. 101. s. 2. of ordering the charges incurred during the suspension of an order of removal, to be paid by the parish to which the order is made, is confined to two cases only, viz. the death or removal of the pauper; and therefore, where a pauper, during the suspension of an order of removal, became irremovable in consequence of an estate descending to him, the court held such case not to be within the act, and that, the pauper not having been removed, no order for the payment of any charges

incurred during the suspension of the original order of removal could be made. *Rex v. Chagford*, 4 B. & A. 235.

II. p. 279. A constable having, without warrant, brought a child from *A.* to *B.*, two justices of *B.* by an order of removal, reciting the fact, returned the child to *A.*, there to be provided for according to law, and held good. *Rex v. Banbury*, Comb. 372. ii. 529.

Two justices, by their order, sent *J.* from the parish of *Q.* to her master, with whom she lived as a servant in *R.*, to remain "until she be discharged." The justices of *R.* sent her back to *Q.*; it was insisted that this second order was bad, being made before the time had expired for appealing against the first order, but the court said, no appeal lay against such an order. *Rex v. Gravesend*, 3 Comyn's Rep. 97. ii. 630.

KK. To p. 279. after art. 5. Where, by charter, the magistrates of a borough, which was a county of itself, held only general sessions twice a-year, and not quarter sessions, it was held that an appeal against an order of removal might be made to the next general sessions for the borough. *Rex v. Carmarthen*, 4 B. & A. 291.

LL. p. 288. after div. IX. add, "X. By Relief."

MM. p. 290. art. 18. after child, dele,

NN. p. 293. art. 7. dele, For.

OO. p. 296. art. 25. after emancipated, dele,

PP. p. 297. art. 36. after family add,

QQ. p. 298. after art. 41. Where a child was sent to the house of a relation, to be out of the way of the small pox, this was held to be no emancipation, although, in fact, the child never returned to its parent's house. *Rex v. Long Wittenham*, ii. 29.

RR. To p. 298. after art. 43. Where the pauper, at the time of hiring himself, had a daughter of the age of 18, who from the age of 4 had lived with her grandfather and been maintained by him, and after his death by her grandmother, which continued until she attained 21 years of age, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter; she was held not to be emancipated, and therefore that the pauper was not within 3 & 4 W. & M. a person not having a child at the time of hiring. *Rex v. Uckfield*, 5 M. & S. 214.

SS. p. 301. art. 1. for "there," read "at the place."

TT. art. 6. p. 301. for "derivative settlement," read "one, for which such evidence is insufficient."

UU. 304. line 9 from top, for "of" read "by"

VV. 310. art. 32. after cases dele,

WW. p. 335. (With respect to evidence of value.) The sessions are bound to receive evidence of the value of the tenement for any one year during the tenancy, and are not to be guided solely by the rent. *Rex v. Bilsdale Kirkham*, ii. 137.

XX. An unstamped agreement for letting a tenement having been lost, the court would not allow parol evidence to be given of its contents for the purpose of thereby proving the value of the tenement. *Rex v. Castle Morton*, 3 B. & A. 588.

YY. p. 344. after art. 3. See *Rex v. Uckfield*, ante Addend. RR.

ZZ. p. 383. after art. 325. should be inserted what at present stand as arts. 243, 244, 245.

AB. p. 290. after art. 4. And where the infant binding himself was at the time a pauper in the parish workhouse, and the parish officers paid the premium, it was held not necessary that they should execute the indenture, or that the justices should assent thereto, the apprentice not being a parish apprentice within 43 *Eliz. c. 2. Rex v. Arundel, 5 M. & S. 257.*

AC. p. 392. Art. 16. for "in appendix," say "under title Apprentices, div. VIII. *ante.*"

AD. p. 411. By 27 *Geo. 3. c. 1.* persons selling illegal lottery tickets are to be deemed vagrants.

AE. p. 431. By 1 & 2 *Geo. 4. c. 64.* all provisions now in force relative to the passing of any rogue, vagabond, vagrant, incorrigible rogue, or other idle and disorderly person, to his or her place of legal settlement or place of birth, or to the place of abode of his or her father or mother, shall cease; and it shall not be lawful for any justice to grant any pass, or to give any directions for the conveyance of any rogue, &c. (a), to any such place as aforesaid, or to grant any walking or permissive pass, or any other pass whatever, to any person whatever.

By s. 2. it shall not be lawful for any person to claim or demand of or from any justice any order for any sum of money or reward for apprehending and carrying before such justice, or delivering to any constable or other person, any rogue, &c.; nor shall any justice order to be paid to any person, for apprehending any such offender, any sum of money or reward other than as is hereinafter in that behalf provided.

By s. 3. when any rogue, &c. shall be apprehended and brought before any justice by any person, or shall be apprehended and delivered to any constable or other such officer by any person (not being a constable or other such officer), such justice may in his discretion, by warrant under his hand and seal, order any overseer of the parish or place wherein such act of vagrancy shall be committed, to pay to the person so apprehending such offender, a sum of money not exceeding 5s. for every offender so apprehended; which sum shall be allowed to such overseer in his account, he producing the justice's order, and a receipt under the hand of the person to whom such sum was paid; and if such overseer neglect to pay the said sum, the said justice, on oath thereof made, may, by warrant under his hand and seal, order the same to be levied by distress and sale of the goods of such overseer, and the overplus (if any), after the charges of such distress are satisfied, shall be returned to such overseer, who in such case shall not be allowed the sum so levied in his accounts.

By s. 4. it shall not be lawful for any justice (except the justices in their general or quarter sessions assembled) to commit any rogue, &c. to any gaol or house of correction, for any time exceeding three months or less than one month, unless such offender shall be so committed to remain in the said gaol or house of correction until the next general or quarter sessions; and every such offender, who shall be committed to the said gaol or house of correction, shall be there kept to hard labour during the period

(a) The same words follow here and in all the other clauses, after the word rogue, as above.

of his or her confinement therein : provided always, that it shall be in the discretion of the justice before whom any person apprehended as a rogue, &c. shall be brought, either to commit or discharge such person, although an act of vagrancy be proved against the person so charged.

By s. 5. when any such justice as aforesaid shall commit any such offender to the house of correction, there to remain till the next general or quarter sessions, the said justice may require the person by whom such offender shall be apprehended, to become bound in sufficient recognizance, to appear to the said general or quarter sessions, to prosecute and give evidence against such offender, touching his said offence ; and the justices at their said general or quarter sessions are hereby authorized, at the request of any person who shall become bound in any recognizance to prosecute or give evidence, and who shall appear to prosecute or give evidence against such offender, to order the treasurer of the county, riding, division, or place in which the offence shall have been committed, to pay unto such prosecutor and witnesses respectively, such sum and sums of money as to the said justices shall seem reasonable and sufficient to reimburse such prosecutor and witnesses respectively for the expenses they shall have been severally put to, and for their trouble and loss of time in and about such prosecution ; which order of the said justices the clerk of the peace for the said county is hereby directed and required forthwith to make out and deliver unto such prosecutor, upon being paid for the same the sum of one shilling and no more ; and the treasurer of the said county, &c. is hereby authorized and required, upon sight of such order, forthwith to pay to such prosecutor or other person authorized to receive the same, such money as aforesaid, and shall be allowed the same in his account.

By s. 6. when any such offender as aforesaid, who shall have been committed to the gaol or house of correction, shall be duly discharged therefrom, the justices visiting the said gaol or house of correction, may order such portion of the earnings of such offender during his confinement therein, or such sum of money, to be paid by the gaoler or keeper of the said gaol or house of correction to such offender, as such justices in their discretion shall think fit ; which sum shall be repaid to the said gaoler or keeper of the gaol or house of correction, by the treasurer of the county, riding, or division, in which such gaol or house of correction is situated.

By s. 7. wherever it shall appear to two justices, that any person apprehended as a rogue, &c. and directed to be discharged without being committed, or to the said visiting justices, or two or more of them, where any person shall have been committed to gaol and discharged therefrom, that it is necessary and proper that such person ought to be passed as a vagrant to his or her place of birth, or of settlement, or to the place of abode of his or her father or mother, in every such case such justices may cause such person to be passed and conveyed in like manner as he or she might have been before the passing of this act.

By s. 8. nothing in this act contained shall alter the provisions of 59 Geo. 3. c. 12. or in any manner affect the mode of passing poor persons born in Scotland and Ireland, and in the isles of Man, Jersey, and Guernsey, who may become chargeable to parishes in England, or in any manner to alter or affect the mode in which, by the laws now in force, poor

persons, not having committed acts of vagrancy, are directed to be removed to their places of settlement.

By s. 9. this act shall continue in force until Sept. 1, 1822, and no longer.

AF. p. 435.—

Power given to Guardians to sell Poor-Houses and Lands.

By 1 & 2 Geo. 4. c. 56. it shall and may be lawful for the guardians, or the visitor and guardians for the time being, of the poor of any parish, township, or place, or of several united parishes, townships, or places, which hath or have adopted, or shall hereafter adopt the provisions of stat. 22 Geo. 3. c. 83. or the major part or number of such acting guardians, and jointly with the visitor, if any, for the time being (notwithstanding any omission to appoint guardians in each successive year, and also notwithstanding any informality in the appointment of any such acting visitor or guardians), and they are hereby authorized, under the order and direction of the inhabitants of any such parish, township, or place, or each of several such united parishes, townships, or places, in vestry assembled, and with the consent of two justices acting in and for the county, division, city, borough, or place, or several counties, divisions, cities, boroughs, or places, within which such parish, township, or place, or several parishes, townships, or places, shall be situate, to sell and dispose of any workhouse or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds, with their appurtenances, which may have been purchased or erected by or on behalf of such parish, township, or place, or several united parishes, townships, or places, for the purposes and under the authority of the said act, and the fee simple and inheritance thereof, or any other estate or interest therein; and by bargain and sale to convey and assure the same unto the purchaser or purchasers thereof respectively, and his, her, and their respective heirs, executors, administrators, and assigns, or as he or they shall direct, and to give and sign receipts for the purchase money, which receipts shall be effectual discharges to the purchaser or purchasers, and his, her, or their respective heirs, executors, administrators, and assigns, without any obligation on him, her, or them to see to the application of his, her, or their purchase money; and from and after every such sale, the workhouse or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds, with their appurtenances, so sold, shall be discharged from all the trusts and purposes of the said stat. 22 Geo. 3. c. 83.

Application of Money to arise by such Sale.

By s. 2. a competent part of the money arising from every such sale shall be applied in defraying the expenses attending the sale, and in or towards discharging any incumbrances affecting the said workhouse, or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds respectively, and any debts which may have been contracted by the guardians, or visitor and guardians of such parish, township, or place, or united parishes, townships, or places

AG. p. 444. for "c. 3." read "c. 36."

THE END.









